



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 22-01108
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not deliberately falsify his security clearance application or information during his interview with a background investigator, so personal conduct security concerns are not established, and he mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On July 22, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence, and Guideline E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on August 24, 2022, and he submitted supplemental answers to the SOR on August 30, 2022; October 17, 2022; and October 20, 2022. (Item 1) He elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on October 31, 2022. A

complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM and responded on November 29, 2022 (FORM Response). The case was assigned to me on January 18, 2023.

The Government exhibits identified as Items 1 through 3, and Applicant's FORM Response, are admitted in evidence without objection. Department Counsel requested that I take administrative notice of certain facts about Ethiopia. The request, included in the record as Item 4, is not admitted in evidence, but I have taken administrative notice of the facts contained therein, as summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.b and he denied SOR ¶¶ 2.a-2.b. He is 52 years old. He was born in Ethiopia, where he obtained an associate degree in 1990 and he married his first spouse in 2004. He emigrated to the United States in 2008, became a naturalized U.S. citizen in 2013, and was issued a U.S. passport in 2014. He divorced his first spouse in 2014, remarried in Ethiopia in 2015, and divorced in 2021. (Items 1-3; FORM Response)

As of his July 2022 response to interrogatories, Applicant's girlfriend since approximately 2015 is a 36-year-old, Ethiopian-born, naturalized U.S. citizen, with whom he has three minor children. He previously owned a home in the United States from 2010 to 2014, and he has lived with his sister and her spouse since 2018. He has volunteered as a priest at his church. He has worked as a part-time bus driver for county public schools since February 2018. He also worked as a bus driver for his employer, a DOD contractor, since December 2018. He has never held a security clearance. (Items 1-3; FORM Response)

Applicant's father and mother are deceased. His 54-year-old brother, his 49-year-old sister-in-law, and their 4-year-old child are citizens and residents of Ethiopia. His brother works as a salesman and is not affiliated with a foreign government or military. Applicant has weekly contact with his brother. After the birth of his brother's child, Applicant sent his brother \$150 to \$200 two to three times as a gift. He traveled to Ethiopia in 2015 and 2017 to visit his then-spouse, and he again traveled there in 2018 to visit his father. He used his U.S. passport to travel there. He saw his brother and his brother's family during each of these trips. He has not since traveled to Ethiopia. (Items 2-3)

Applicant's 48-year-old sister, born in Ethiopia, is a U.S. citizen and resident. She is also a bus driver for county public schools. As noted above, Applicant lives with her and her spouse, and he contributes to their rent. Applicant expects to marry his girlfriend and the mother of his children. She previously worked at a beauty salon but was unemployed as of his response to interrogatories. He provides her with financial support of \$1,000 monthly. (Items 2-3)

Applicant disclosed information about his ex-spouses, girlfriend, parents, sister, and then-parents-in-law on his October 2020 security clearance application (SCA). He did not disclose, in response to Section 18 of his SCA that inquired about relatives, information about his brother in Ethiopia. The report of Applicant's October 20, 2020, background interview reflects that after the background investigator (BI) asked Applicant to verify information about his parents and then-parents-in-law, BI asked Applicant if he had any other relatives that he was required to list on his SCA, and Applicant indicated that he did not. The report reflects that BI asked if Applicant's negative response meant that it was just Applicant and his sister, and Applicant responded in the affirmative. The report reflects that after BI verified information about Applicant's listed foreign contact, which was his then-spouse, BI asked Applicant if he had any other foreign contacts and Applicant disclosed his brother in Ethiopia. He then disclosed information about his brother and his brother's family in Ethiopia during the remainder of that background interview. He continued to disclose such information during four subsequent interviews in October 2020 and November 2020, as well as in his response to interrogatories, Answer, and FORM Response. (Items 1-3; Form Response)

Applicant maintained that he did not intentionally falsify his SCA or his October 20, 2020, background interview by failing to disclose information about his brother in Ethiopia. He indicated that he did not list his brother on his SCA because he found the SCA confusing, as he did not understand what foreign contacts meant, and he was focused on disclosing his family in the United States. He also indicated that he was under time restraints, and he did not have his brother's contact information. He stated that his omission was a misunderstanding. (Items 1-3; Form Response)

Ethiopia

Ethiopia's constitution provides for an ethnic-based federal system of government. Prime Minister Abiy Ahmed leads the Prosperity Party, which controls the government. On October 4, 2021, newly elected members of parliament took their seats. The elections took place against a backdrop of grave instability, including inter-ethnic and inter-communal violence and an electoral process that was not free or fair for all citizens, although observers assessed the result generally reflected the will of most citizens.

The U.S. Department of State travel advisory for Ethiopia is at "Level 3: Reconsider Travel," due to armed conflict, civil unrest, communications disruptions, crime, and the potential for terrorism and kidnapping in border areas. It advises against travel to the Tigray region and border with Eritrea due to armed conflict; the Amhara Region due to armed conflict and civil unrest; the Afar Region due to armed conflict and civil unrest; the border area with Somalia due to potential for terrorism, kidnapping, and landmines; border areas with Sudan and South Sudan due to crime, kidnapping, civil unrest, and ongoing clashes between various armed groups; border areas with Kenya due to potential for terrorism and ethnically motivated violence; and the Wollega Zones of the Oromia Region due to violence and civil unrest. The U.S. Department of State has assessed Addis Ababa as being a "CRITICAL" threat location for crime directed at or affecting official U.S. Government interests.

The continuing threat of al-Shabaab (AS) and ISIS emanating from Somalia is Ethiopia's core terrorism concern and the focal point of its security apparatus and the Ethiopian National Defense Force's counterterrorism efforts. In late 2020, Ethiopian security officials announced the arrest of AS and ISIS members accused of planning attacks in Addis Ababa and other parts of Ethiopia. Terrorist organizations continue to plan terrorist attacks against U.S. citizens, Western targets, and interests in East Africa.

The U.S. Office of the Director of National Intelligence (ODNI) noted that the conflict in Ethiopia's Tigray region since November 2020 has worsened humanitarian conditions and resulted in at least 2.1 million internally displaced persons. The ongoing conflict has also led to refugees fleeing to neighboring countries, which could destabilize the region resulting in additional migrants seeking travel to Europe. The ODNI assessed that in 2022, East Africa will see new bouts of conflict in the coming year as the region becomes increasingly strained by the civil war in Ethiopia and other regional conflicts.

The U.S. Department of State reported that the most significant human rights issues in Ethiopia included: unlawful or arbitrary killings, including extrajudicial killings by the government; forced disappearance by the government; torture and cases of cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest and detention; political prisoners or detainees; serious abuses in a conflict, including reportedly unlawful or widespread civilian harm, enforced disappearances or abductions, torture and physical abuses or punishments; reports of unlawful recruitment or use of child soldiers by militia groups; serious restrictions on free expression and media, including violence or threats of violence against journalists, unjustified arrests of journalists, censorship, and the existence of criminal libel and slander laws; serious restrictions on internet freedoms; substantial interference with the freedom of peaceful assembly; serious government corruption; lack of investigation and accountability for gender-based violence; trafficking in persons; crimes involving violence or threats of violence targeting members of racial or ethnic minority groups; and the existence or use of laws criminalizing same-sex sexual conduct.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as

the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations

such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. Applicant's brother and sister-in-law are Ethiopian citizens residing in Ethiopia. The U.S. Department of State travel advisory for Ethiopia is at "Level 3: Reconsider Travel," due to armed conflict, civil unrest, communications disruptions, crime, and the potential for terrorism and kidnapping in border areas. Applicant has weekly contact with his brother in Ethiopia, and Applicant saw his brother and his brother's family when he traveled to Ethiopia in 2015, 2017, and 2018. His family in Ethiopia creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in

that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b). Although Applicant has not traveled to Ethiopia since 2018, he maintains weekly contact with his brother and his brother's family there. AG ¶ 8(c) is not established. Applicant complied with reporting requirements, to include reporting his brother during his background interviews, response to interrogatories, Answer, and FORM Response. AG ¶ 8(e) applies.

Applicant has lived in the United States since 2008. He is a naturalized U.S. citizen and holds a U.S. passport, which he used to travel to Ethiopia during his trips there. His girlfriend since 2015, whom he intends to marry, is also a naturalized U.S. citizen, and she is the mother of their three children. He provides her with financial support of \$1,000 monthly. He lives with his sister and her spouse, and he contributes to their rent. He has worked as a part-time bus driver for county public schools and as a bus driver for his employer since 2018. He also volunteers as a priest for his church. Applicant met his burden to demonstrate that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is established.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant disclosed information about his brother in Ethiopia during his October 20, 2020 background interview. He continued to disclose such information in subsequent interviews, in his response to interrogatories, his Answer, and his FORM Response. He explained that he found the SCA confusing, and he was focused on disclosing his family in the United States. He maintained that he did not intentionally falsify his SCA or information during his background interview, and that the omission of his brother in Ethiopia was a misunderstanding. I find that he did not deliberately falsify his response to section 18 of his SCA, and he did not deliberately falsify information during his October 20, 2022, interview. AG ¶¶ 16(a) and 16(b) are not established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. After weighing the disqualifying and mitigating conditions under Guideline B and Guideline E and evaluating all the evidence in the context of the whole person, I conclude Applicant did

not deliberately falsify his security clearance application or information during his interview with a background investigator, and he mitigated the security concerns raised by his foreign connections. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge