



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



In the matter of:)	
)	
)	ISCR Case No. 23-02209
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the foreign influence security concerns generated by his family in Ghana, his wife, a Ghanaian resident alien, and by his Ghanaian property interests. Clearance is granted.

Statement of the Case

On October 26, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline B, foreign influence, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action under Executive Order (EO) 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

In an undated answer, Applicant answered the SOR admitting all the allegations, and requested a hearing, whereupon the case was assigned to me on January 3, 2024. On

January 18, 2024, DOHA issued a notice of video teleconference hearing, scheduling the hearing on February 5, 2024. The hearing was held as scheduled. At the hearing, I considered the testimony of Applicant, together with three Government Exhibits (GE), marked and incorporated into the record as GE 1 through GE 3. Also, I took administrative notice of the facts set forth in a document published by the U.S. Department of State's Bureau of Foreign Affairs, entitled U.S. Relations with Ghana, dated August 2, 2021, set forth in GE 3 at pages four through seven. At the end of the hearing, I extended the record at Applicant's request to allow him the opportunity to submit exhibits. Within the time allotted, Applicant submitted two exhibits which I incorporated into the record as Applicant Exhibit (AE) A and AE B. The transcript was received on February 20, 2024.

Findings of Fact

Applicant is a 52-year-old married man. He has been married three times. His first wife passed away in 2011, his second marriage, which began in 2012, ended in divorce in 2016, and he has been married to his current wife since 2017. (Tr. 18; GE 2 at 8) He has one adopted child who is the child of his late first wife, three biological children from the marriage to his late wife, and two stepchildren who are children of his current wife. (Tr. 22-23)

For the past two years, Applicant has worked for a contractor as a diplomatic security officer. He monitors people coming in and out of the building where he works. (GE 2 at 7; Tr. 40)

Applicant was born, raised, and educated in Ghana. (Tr. 12) He immigrated to the United States in 2013. (Tr. 17) Before immigrating here, he worked for the Ghanaian government for 11 years in its health department. (Tr. 13,17,51) He receives no benefits from his prior Ghanaian government employment. (Tr. 32) When Applicant immigrated here, his children, including his adopted daughter, remained in Ghana with his second wife. (Tr. 21) Applicant began working on the immigration process for his second wife and the children, shortly after immigrating to the United States. However, when his second marriage began deteriorating, he withdrew all the immigration applications. (Tr. 21)

Applicant re-initiated the immigration process after he remarried in 2017. (Tr. 13) His biological children obtained their visas in 2022. (Tr. 22) That year, they joined him here. Applicant's adopted daughter and his two stepchildren remained in Ghana with his current wife. (Tr. 23)

Applicant's oldest biological child is in the U.S. Army and is attending college part time. (Tr. 46) His middle biological child attends the same college as her older brother, and Applicant's youngest biological child lives with him and is in high school. (Tr. 47)

Applicant's wife is an accountant. (GE 2 at 8) She works for the Ghanaian government. (Tr.15) She immigrated to the United States in November 2023, and recently obtained permanent U.S. resident status. (AE A; Tr. 23) Although she still works for the Ghanaian government, she is in the process of resigning. (Tr. 24)

Applicant's wife owns a home in Ghana. She and Applicant consider it their "family house." (Tr. 24) The three remaining children living in Ghana, all young adults, live in this house. (Tr. 26) All are recent college graduates. (Tr. 26-28) Applicant's adopted child, the child of his deceased first wife, is completing a mandatory, one-year national service requirement in the pharmaceutical branch of Ghana's nationalized health services department. (Tr. 26) The second oldest, a stepchild who is the biological child of his current wife, is interning for an oil company, and the youngest stepchild is interning with a Ghanaian government agency. (Tr. 28, 43) These children were unable to immigrate with Applicant's wife because they reached legal adulthood while his wife's application was pending, and had to then apply for visas individually. (Tr. 28-29; AE B) Their applications are pending. (Tr. 30) Applicant is in regular contact with them, and sends them, collectively \$300 to \$400 every other week. (Tr. 36)

Applicant's half-sister is a citizen and resident of Ghana. (GE 2 at 9) She owns a grocery store. (GE 2 at 10) They talk approximately once per month. (Tr 30-31)

Applicant owns an undeveloped parcel of land in Ghana that he purchased in 2008, intending to build a house on it. (Tr. 32; GE 2 at 19) He may one day build a house on it, in hopes of renting it. (Tr. 33) It is worth approximately \$50,000 to \$60,000, (Tr. 33) Applicant does not own any property in the United States. Applicant has approximately \$25,000 invested in retirement accounts in the United States. (Tr. 39)

Applicant has maintained a checking and a savings account in Ghana since 2004. (GE 2 at 10) When he first opened the checking account, he used it to deposit his pay. (Tr. 34) He has about \$1,500 deposited in the accounts. (Answer at 3) The account is in an inactive status. (Tr. 35)

Applicant's wife has a bank account in Ghana. She uses it for direct deposit of her pay. (Answer at 3) It has a balance of approximately \$500.

Administrative Notice

Ghana is a democratic republic that has had diplomatic relations with the United States since its independence in 1957. (GE 3 at 3) A close ally, Ghana hosted the first cohort of U.S. Peace Corps volunteers. (*Id.*) It is a model for resilient financial institutions, transparent and peaceful transfers of power, and regional stability in West Africa. The United States and Ghana have close commercial interests, as the United States is Ghana's largest trading partner, and approximately 100 U.S. multi-national corporations do business in Ghana. (GE 3 at 3-5)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484

U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 ¶ 1(d) 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel[.]" The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline B: Foreign Influence

Under this guideline, "foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiances." (AG ¶ 6) Moreover, "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 influence.”(*Id.*) The following disqualifying conditions under AG ¶ 7 are potentially applicable:

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

(e) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign-owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

The applicability of each of these disqualifying conditions is contingent upon a heightened risk analysis, considering factors such as the nature of the foreign government, any history of intelligence gathering against the United States, the country’s human rights record, the risk of terrorism, and the nature of the country’s relationship with the United States. (ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004)) Ghana is a representative democracy. It has a strong relationship with the United States, a growing investment market, and it is a partner in defense and law enforcement matters. While the U.S. State Department fact sheet enclosed within GE 3 addresses these matters in depth, there is no mention of any problems with terrorism, human rights violations, or espionage against the United States. Nevertheless, friendly countries can commit espionage, or have profound disagreements with the United States, as readily as hostile ones. (ISCR Case No. 02-22461 (App. Bd. Oct. 27, 2005)) Consequently, although the risk is small in comparison to the risk posed by a hostile country or a strategic competitor, it is heightened, nonetheless. Under these circumstances, AG ¶¶ 7(a), 7(e), and 7(f) apply.

Applicant’s contact with his half-sister is casual and infrequent. Consequently, this relationship is mitigated by AG ¶ 8(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. I resolve subparagraph 1.d in his favor.

Applicant is clearly close to his adopted child and two stepchildren living in Ghana. Although the property he owns in Ghana is undeveloped, and the bank account is inactive, his children live in the home his wife owns and Applicant considers it their family home. Conversely, Applicant has been living in the United States for more than ten years, three of his children, including a son in the U.S. Army, live here, his wife recently joined him here, and they are working on helping his Ghanaian children immigrate here. Under these circumstances, I conclude that AG ¶ 8(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," applies to Applicant's relationship with his adopted child and stepchildren living in Ghana.

The Ghanaian bank accounts of Applicant and his wife have nominal amounts of money deposited in them. Under these circumstances, AG ¶ 8(f), "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual," applies. I resolve subparagraph 1.h in Applicant's favor.

The value of Applicant and his wife's real estate interests are not insignificant, particularly given that Applicant does not own property in the United States. However, as one property is undeveloped, and the other is for the children who are in the process of immigrating to the United States, their Ghanaian real estate is sufficiently innocuous to trigger the application of AG ¶ 8(f), "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate , or pressure the individual," applies.

Upon considering Applicant's relatives and Ghanaian property interests, together with the geopolitical position of Ghana *vis a vis* the United States, and the length of time he has been living in the United States, I conclude Applicant has mitigated the foreign influence security concerns.

Whole-Person Concept

Upon considering the whole-person factors in my analysis of the facts, I conclude Applicant mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a – 1.h:

For Applicant

Conclusion

Considering the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge