



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



In the matter of:)	
)	
)	ISCR Case No. 23-01195
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Samir Nakhleh, Esq., Applicant’s Counsel

07/02/2024

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On September 14, 2023, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on September 25, 2023, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on December 18, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 10, 2024, scheduling the hearing for February 15, 2024. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 4, which were admitted without objection, and Hearing Exhibits (HX) 1 through 3 for Administrative Notice. Applicant testified on his own behalf and offered documents,

which I marked Applicant's Exhibits (AppXs) A through L and admitted into evidence. The record was left open until March 15, 2024, for receipt of additional documentation. On March 18, 2024, Applicant offered AppXs M through P, which were admitted into evidence. DOHA received the transcript of the hearing (TR) on February 26, 2024.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to Somalia, Ethiopia, and Kenya. Department Counsel provided a 17-page summary of the facts, supported by Government documents pertaining to Somalia, Ethiopia, and Kenya, identified as HE 1-3. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports as to Somalia and Ethiopia; but not of Kenya, as explained under Findings of Fact, below. The administratively noticed facts are limited to matters of general knowledge, not subject to reasonable dispute. As noted, they are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to all the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old, and currently unemployed, but seeks employment by a defense contractor as a linguist. (TR at page 18 line 1 to page 19 line 17, and GX 1 at page 5.) He is married to a Somali citizen, and has three children, who live with their mother in Somalia. (TR at page 23 line 8 to page 26 line 2).

Guideline B - Foreign Influence & Guideline C - Foreign Preference

1.a. Applicant's father is a U.S. citizen, but for about ten months of each year lives apart from his wife (Applicant's U.S. based mother) in Somalia. (TR at page 29 lines 18-19, and at page 43 lines 4-21.)

1.b. and 1.c. Applicant's wife is a citizen of Ethiopia, but resides in Somalia with their three minor children. He is seeking U.S. citizenship for his wife, and U.S. citizenship for his children has recently been "approved," as evidenced by documentation. (AppXs H and M-P.) Applicant speaks with his immediate family on an almost daily basis. (TR at page 23 line 8 to page 26 line 2, and at page 43 line 4 to page 41 line 20.)

1.d.-1.g. Applicant's widowed mother-in-law, three sisters-in-law, and one of his two brothers-in-law are citizens of Ethiopia, but reside in Somalia. His mother-in-law and sisters-in-law are housewives. Applicant's brother-in-law "works in construction." He communicates with them once or twice a year. Applicant never met his other Ethiopian brother-in-law, who resides in Austria. (TR at page 30 line 17 to page 32 line 4.)

1.h. Applicant's friend is a citizen of Somalia; but resides in Kenya, where he owns a business. He last saw this friend in 2020 in Kenya, "about three years ago. (TR at page 32 line 5 to page 33 line 13.)

1.i., 1.k. and 1.l. Applicant's father owns a 25% interest in his family's Somalia company valued at more than \$8,000,000. Applicant worked for his father's company for about ten years from 2012 to 2022. Also, from October 2016 to about January 2018, Applicant owned and operated one of the company's supermarkets. As none of Applicant's U.S. based siblings ever worked for their father's company, there is a strong likelihood that Applicant will inherit his father's share of the company. (TR at page 21 lines 1~16, at page 33 line 24 to page 36 line 19, and at page 37 line 14 to page 41 line 14.)

1.j. Applicant maintains a \$20,000 bank account in Somalia, which he uses to support his wife and children. (TR at page 26 lines 4~14, and at page 27 lines 5~10.)

Notice

I take administrative notice of the following facts about Somalia and Ethiopia. (Applicant's connection to Keya through his friend is de minimis, at best.)

Somalia is a federal parliamentary republic. The U.S. Department of State has issued a Level 4: Do Not Travel Advisory for Somalia. Al-Shabaab continues to pose a significant terrorist threat in Somalia. The Islamic State branch in Somalia (IS-Somalia) is also active. (HE1.)

Ethiopia is a federal democratic republic. The U.S. Department of State has issued a Level 3: Reconsider Travel due to sporadic violent conflict in border areas. Al-Shabaab also continues to pose a significant terrorist threat in Ethiopia. The Government of Ethiopia continues to partner with the U.S. government on counterterrorism issues. (HE 2.)

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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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 ¶ 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 the applicant may deliberately or inadvertently fail to protect or 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 (EO) 10865 provides that adverse 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 relating to the guideline 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. Four 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;

(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;

(e) shared 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

Applicant's immediate family live in Somalia. He lived and worked in Somalia from 2012 to 2022, and only recently returned to the U.S. Applicant also has a potential, multimillion dollar financial interest in Somalia. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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

(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.

None of these apply. Applicant's family, significant business interests, and fortune are clearly in Somalia. Foreign Influence is found against Applicant.

Guideline C - Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and

(2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;

(e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and

(f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

None of these apply. Foreign Preference is found for Applicant.

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(d):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is a respected in the linguist community. (AppXs I~K.) However, overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. He has extensive and continuing familial and financial interests in Somalia, where the significant threat of anti-western terrorism creates high potential for pressure, coercion, or duress. For all these reasons, I conclude Applicant failed to mitigate the Foreign Influence security concerns.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a.~1.l:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge