



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01182
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

11/22/2024

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns or the personal conduct security concerns. The sexual conduct security concerns were not established.

On September 11, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence, Guideline D, sexual conduct, and Guideline E, personal conduct. Applicant responded to the SOR on April 23, 2024, and requested a decision based on the written record in lieu of a hearing. He admitted the allegations in the SOR without additional comment.

The Government’s written case was submitted on July 19, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from the date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 29, 2024. He did not respond to the FORM. The case was assigned to me on October 29, 2024. The Government exhibits included in the FORM, marked as Items 1-6, are admitted in evidence without objection. I have marked as Administrative Notice (AN) I the Government’s unopposed motion that I take administrative notice of certain

facts about the country conditions in Somalia, as well as its relationship with the United States, as referenced in official U.S. Government documents. Without objection, I take administrative notice of the facts contained therein.

### **Findings of Fact**

Applicant is a 58-year-old naturalized U.S. Citizen. He has an employment offer from a U.S. defense contractor that is conditioned upon his being granted security clearance eligibility. He was born in Somalia. In 1990, he fled Somalia to Pakistan. He lived in Pakistan for about 10 years and attended college there. In 2000, after the U.S. government approved his refugee status, he moved to the United States. He became a naturalized U.S. citizen in 2005. From approximately 2010 until 2019, Applicant lived and worked in Ghana. He first entered Ghana with a visa. To reside in Ghana, he was required to renew his resident permit annually for \$1,000. After about 2013, he stopped paying the \$1,000 because he thought it too expensive. Therefore, he resided illegally in Ghana for at least five years. In 2019, when he decided to leave Ghana, he paid a \$500 bribe to a Ghanaian immigration official to “cure” his failure to renew his resident permit, and to obtain the requisite documentation to leave the country. He claimed that he bribed the official because everyone does it and it is the way things work in Africa. He has worked and resided in the U.S. after he left Ghana in 2019, but he plans to live and work in Somalia if he is employed by the government contractor. (Items 3, 5, 6)

Applicant has a high school diploma from a school in Somalia. He attended college while in Pakistan without earning a degree. In 2008, he earned a bachelor’s degree from a college in the United States. In 2002, he married a naturalized U.S. citizen who was born in Somalia. He and his wife have a 21-year-old daughter together who is a U.S. citizen. Their daughter suffers from autism and is non-verbal. In 2021, his wife moved to Somalia with their daughter, and they have resided there since (SOR ¶ 1.c). He does not know their whereabouts, however, when he completed his February 2023 counterintelligence security screening questionnaire, he provided a city or town in Somalia in which they reside. As of about January 2023, Applicant had not had contact with his wife or daughter since they moved to Somalia. They are not legally separated, but Applicant considers himself “divorced.” Applicant has an 11-year-old daughter with a woman with whom he had an extramarital affair. His younger daughter is a U.S. citizen residing in the U.S. He provides financial support to his younger daughter that is not court mandated. He is no longer intimate with the mother of his 11-year-old daughter. His spouse is not aware of the extramarital affair or his other daughter. (Items 3-6)

Applicant has three brothers who are citizens and residents of Somalia (SOR ¶ 1.a). He has three sisters who are citizens and residents of Somalia (SOR ¶ 1.b). He has contact with three of these Somali siblings at least one or twice per month via telephone or social media. Two of these brothers work for the Somali department of education. With respect to the three remaining Somali siblings, he had no contact with them since 2020. He has occasionally sent one of his Somali siblings some money when he needed it for living expenses, and he has told one of his siblings that he is seeking employment as a translator for the United States government. He claimed he will not tell any of his other Somali family about this employment unless he is thus

employed. Some of these siblings own real property in Somalia, but Applicant does not stand to inherit any Somali property. There is no evidence that he owns any real property in the United States, and he rents his residence here. (Items 3-6)

Applicant has never been a member of the Somali military or worked for the Somali government. In addition to his 11-year-old daughter, he has friends and associates who reside in the U.S. He claimed his allegiance is solely to the United States, and his Somali family members could not be used to compromise this allegiance. (Items 3-6)

## **Somalia**

I take administrative notice of the information contained in AN I about country conditions in Somalia, and the United States' relationship with it, including, but not limited to:

The State Department has assessed Somalia as being a high threat location for crime directed at or affecting official U.S. government interests. Violent crime such as kidnapping, bombings, indirect fire attacks, murder, assassinations, armed robbery, carjacking, and illegal roadblocks by armed individuals in uniforms occur throughout Somalia. Significant human rights issues exist in Somalia, including unlawful or arbitrary killings, arbitrary arrest or detention, enforced disappearances or abductions, and serious government corruption.

The terrorism situation in Somalia remains unstable and dangerous. No area in Somalia is immune from violence; and the potential exists throughout the country for hostile acts, either targeted or random, against foreign nationals at any time. (AN I)

## **Policies**

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 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 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.”

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.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 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, including its level of control, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members and foreign contacts are vulnerable to coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant has three brothers and three sisters who are citizens and residents of Somalia. His estranged wife and eldest daughter are residents of Somalia. His connection to his family members residing in Somalia presents a potential conflict of interest. The administratively noticed country conditions in Somalia, such as terrorism, civil unrest, and its human-rights record, raise these security concerns to the level of a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Applicant's relationship with his siblings and his older daughter is sufficiently close to raise a security concern about his desire to assist them by providing sensitive or classified information. As a matter of common sense and human experience there is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Application of Guideline B is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. (ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009)). AG ¶¶ 7(a) and 7(b) are established. However, AG ¶¶ 7(a) and 7(b) are not established with respect to his estranged wife. I find that because his relationship with his estranged wife is sufficiently attenuated by a lack of contact, and because of the general concept that

marital bonds are perhaps more easily dissolved than sibling relationships, there is no conflict of interest or heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion with respect to her.

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; and

(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.

Country conditions in Somalia raise security concerns to the level of a heightened risk. Applicant has two brothers and one sister in Somalia with whom he maintains close and frequent contact. He has provided one of them with money to help with living expenses. While there is no evidence that he has been in frequent contact with his other siblings who reside in Somalia since 2020, he did not meet his burden to establish his familial bonds with those siblings have been broken. His older daughter resides in Somalia. While he has a daughter here and other ties to the United States, such as a job and friends, I do not find that those ties are greater than the bonds he has with his many close family members in Somalia. I find that he has failed to provide sufficient evidence that any of the Guideline B mitigating conditions apply with respect to his Somalian siblings and his daughter who resides in Somalia.

#### **Guideline D, Sexual Behavior**

The security concern for sexual behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual,

electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

Applicant had an extramarital affair that resulted in his having his younger daughter. His estranged wife did not know about the affair or the younger daughter. These allegations are contained in SOR ¶ 2.a, which specifically references his estranged wife being unaware of these facts. He has not had contact with his estranged wife since 2021, and he considers himself “divorced.” Given these considerations, I do not find that his estranged wife potentially finding out about the affair and the existence of his younger daughter can be used as a source of coercion, exploitation, or duress. AG ¶ 13(c) is not established.

#### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

SOR ¶ 3.a cross-alleges Applicant’s extramarital affair and his younger daughter that resulted from that affair. SOR ¶ 3.b alleges his 2019 bribery of a Ghanaian immigration official to exit Ghana after consistently failing to pay a more costly Ghanaian residency renewal fee. These incidents are not sufficient for an adverse determination under any other single guideline, but support a whole-person assessment of

questionable judgment, untrustworthiness, lack of candor, etc. AG ¶ 16(c) is established.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

In terms of overall societal impact, adultery is a relatively minor transgression. Applicant's affair has been over for many years. He has not been in contact with his estranged wife since 2021. I find that AG ¶¶ 17(c) and 17(e) are applicable and I find for Applicant with respect to SOR ¶ 3.a.

I do not find that Applicant has shown that bribing a foreign government official is a minor offense. While it has been about six years since he engaged in the actual bribery, he was also intentionally living illegally in Ghana for at least five years prior to the bribery.

He did not acknowledge the impropriety of his conduct. Instead, he attempted to justify it by minimizing it as something everyone does. As he does not appear to understand that what he did is wrong, I do not find that he has shown that his inappropriate behavior is unlikely to recur. With respect to this conduct, none of the Guideline E mitigating factors are sufficiently applicable to mitigate the Guideline E security concerns.

### **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 have incorporated my comments under Guidelines B, D, and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines B and E. The security concerns under Guideline D were not established.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant, except with respect to his estranged wife, as referenced in 1.c, which I find for Applicant.
Paragraph 2, Guideline D:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey  
Administrative Judge

