



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



In the matter of: )  
)  
) ISCR Case No. 12-11062  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

04/14/2016

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny access to classified information. Applicant mitigated the security concerns raised by voting in a foreign election after becoming a naturalized U.S. citizen, but two years before working for a federal contractor in a position that requires access to classified information. He has also mitigated the concerns raised by his relationships with his relatives who are citizens of Ivory Coast. Clearance is granted.

**Statement of the Case**

On December 23, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and foreign preference guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant a security clearance.

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> Department Counsel submitted its written case on June 25, 2015. 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 on September 22, 2015, and provided a response. The case was assigned to me on October 13, 2015. The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 and 2, without objection. The document identified as GE 3 is excluded for the reasons explained below. The documents provided by the Applicant are admitted to the record as Applicant's Exhibits (AE) A through E.

### **Procedural Issues**

GE 3 is a report of investigation (ROI) summarizing the interview Applicant had with a background investigator during his June 2012 investigation. The interview is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions Applicant that if he fails to object to the admission of the interview summary in his response to the FORM that his failure may be taken as a waiver of the authentication requirement. Applicant's failure to object to GE 3 does not demonstrate that he understands the concepts of authentication, or waiver and admissibility. It also does not establish that he understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 3 is inadmissible and I have not considered it.

### **Findings of Fact**

Applicant, 52, has worked for a federal contractor since May 2012. Since 2008, he has also worked as adjunct professor at a public university in his state of residence. He does not have previous employment with a federal contractor and this is his first application for a security clearance. On his application, dated May 13, 2012, Applicant disclosed that he voted in a foreign election in 2010 and that he has several foreign relatives.<sup>3</sup>

Applicant is a native of Ivory Coast. Both of Applicant's parents are deceased. He has three brothers, four half-brothers (three living and one deceased), and one half-sister who are citizens and residents of the same. Applicant's deceased half-brother was an employee of the Ivorian Department of Justice at some time before his death in 2000.<sup>4</sup> The record does not contain any other information about the occupations of Applicant's other siblings and half-siblings. Applicant immigrated to the United States in 1993 at age 29. He became a naturalized U.S. citizen in September 2009. Applicant's Ivorian passport expired in August 2010 and he has not renewed it. Shortly after

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<sup>2</sup> GE 1.

<sup>3</sup> GE 2.

<sup>4</sup> Because this half-sibling has been dead for 16 years, I concur with Applicant's assessment that neither the relationship nor his half-brother's employment is a security concern.

becoming a naturalized U.S. citizen, Applicant voted in an Ivorian election by absentee ballot in November 2010. He has not done so since and is now ineligible to do so. Applicant's wife, whom he married in September 2010, is a permanent resident of the United States and a citizen of Ivory Coast. According to Applicant, his wife is eligible to apply for U.S. citizenship. The couple has two children, U.S. citizens by birth, who are under three years old.<sup>5</sup>

Since immigrating to the United States, Applicant has returned to Ivory Coast on four occasions: three times before becoming a naturalized U.S. citizen and once afterwards. His first trip occurred in 2003, 10 years after coming to the United States, to visit his ailing mother. He returned a year later to bury her. He traveled to Ivory Coast again in 2008 to visit his family. Applicant's most recent trip occurred in 2010 to marry his wife. He traveled using his U.S. passport and obtained a visa from the Ivorian government.<sup>6</sup>

Applicant did not present evidence of significant U.S. assets, but he has invested significantly in his education since immigrating to the United States. Although Applicant received his undergraduate degree at an Ivorian university, he has obtained two master's degrees and a graduate certificate from U.S. universities. He has also received six professional information technology certifications to further his career in the United States. Furthermore, the record does not contain any information to indicate that Applicant has financial interests in Ivory Coast.<sup>7</sup>

## **Policies**

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 access to

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<sup>5</sup> GE 1-2; AE A-B.

<sup>6</sup> AE C.

<sup>7</sup> GE 2; AE A.

classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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**

### **Foreign Preference**

Security concerns involving foreign preference arise when an individual acts in such a way as to indicate a preference for a foreign country over the United States.<sup>8</sup> The SOR alleges that Applicant engaged in disqualifying conduct when he voted in a foreign election in November 2010, a year after becoming a naturalized U.S. citizen.<sup>9</sup> However, the security concern is mitigated.

Applicant’s participation in an Ivorian election in 2010, by absentee ballot, is mitigated by the passage of time. This singular incident occurred more than five years ago and two years before he began working in a position that requires access to classified information. In 2010, Applicant had no reason to know that his actions could be a problem for future endeavors. Since then, he has not engaged in other acts to indicate preference for Ivory Coast. He does not hold dual citizenship, nor does he hold an Ivorian passport. On his last trip to Ivory Cost in 2010, Applicant entered the country using his U.S. passport with a travel visa from the Ivorian government. Furthermore,

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<sup>8</sup> AG ¶ 9.

<sup>9</sup> AG ¶ 10(a).

there is no evidence that he has accepted benefits from the Ivorian government and he is no longer eligible to vote in future Ivorian elections. Although none of the foreign preference mitigating conditions apply with precise literalness, it is not necessary because the mitigating conditions are illustrative in nature. A finding that the foreign preference security concerns are mitigated is determined by a common-sense evaluation of the facts with a view toward making a reasoned determination consistent with the interest of national security.<sup>10</sup>

## Foreign Influence

“[F]oreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.”<sup>11</sup> The SOR alleges that Applicant’s wife is a permanent resident of the United States and a citizen of Ivory Coast. The SOR also alleges that Applicant has three siblings and four living half-siblings who are citizens and residents of Ivory Coast.

While the mere possession of close ties with foreign family members or friends is not disqualifying as a matter of law, a close relationship with even one person living in a foreign country is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. A close relationship with a person who is a resident and citizen of a foreign country can be disqualifying if the contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion; or if the relationship could create a potential conflict of interest between the applicant’s obligation to protect sensitive information or technology, and his desire to help a foreign person.<sup>12</sup> Here, the latter applies. The record, which does not contain any country-specific information, does not support a finding that Applicant’s relationship with his wife, siblings, and half-siblings create a heightened risk.

The record contains sufficient information to mitigate the concerns raised by any potential conflict of interests presented by Applicant’s relationships with foreign relatives. The security concerns raised by Applicant’s wife’s citizenship and residency status no longer remain. Given her permanent residency status and her eligibility for U.S. citizenship, it is unlikely that Applicant will be placed in a position of having to choose between the interest of a foreign individual, group, organization or government and the interests of the United States.<sup>13</sup> Regarding Applicant’s relationships with his siblings and half-siblings in the Ivory Coast, the record does not contain information suggesting that these ties are close. The only information regarding the frequency of

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<sup>10</sup> See ISCR Case No. 13-01281 (App. Bd. Aug. 4, 2014); ISCR Case No. 11-06622 (App. Bd. Jul. 2, 2012).

<sup>11</sup> AG ¶ 6.

<sup>12</sup> AG ¶ 7(b).

<sup>13</sup> AG ¶ 8(b).

Applicant's contacts with them are his four trips to Ivory Coast in the 23 years since he immigrated to the United States. While it is difficult to label sibling relationships as casual, the record supports a finding that his contact with them is infrequent.<sup>14</sup>

Based on the record, it is unlikely that Applicant will be put in a position of having to choose between the interests of his relatives in Ivory Coast and those of the United States. Applicant immigrated to the United States 23 years ago. Since then, he has had limited contacts with his native country. Applicant is firmly rooted in the United States by the presence of his wife and two U.S. born children. He has chosen to embrace U.S. citizenship, using it to sponsor his wife's immigration to the United States. They have also chosen to raise their two children in the United States. He has further rooted himself to the United States through his significant investments he has made in his education, receiving multiple degrees from U.S. universities and professional certifications to make him more competitive in the U.S. job market. Viewed in totality, these factors lead me to the conclusion that Applicant can be expected to resolve any conflict of interest in favor of the United States. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant does not have divided loyalties between the United States and Ivory Coast. Based on the evidence, I conclude that Applicant has mitigated the foreign influence and foreign preference 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, Foreign Preference:	FOR APPLICANT
Subparagraphs 1.a:	For Applicant
Paragraph 2, Foreign Influence	FOR APPLICANT
Subparagraphs 2.a – 2.e:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge

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<sup>14</sup> AG ¶ 8(c).