



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



In the matter of:)
)
) ISCR Case No. 14-01529
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Department Counsel
For Applicant: *Pro se*

05/29/2015

Decision

DAM, Shari, Administrative Judge:

Applicant was born in Somalia and immigrated to the United States in 1996. He became a naturalized U.S. citizen in 2008. Applicant has two cousins, who are citizens and residents of Somalia. For eight years he sent financial support to them. Two of his children are citizens of Somalia, residing with him. His nephew, who is an undocumented person from Somalia, resides with him. Applicant failed to present sufficient evidence to mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 2, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 6, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective after September 1, 2006. The SOR detailed reasons why DoD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him.

Applicant answered the SOR in writing on November 21, 2014, (Answer) and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 24, 2015, and issued a Notice of Hearing on March 10, 2015, scheduling the hearing for April 2, 2015. The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence, which were admitted without objection. Applicant testified. He offered one exhibit (AE) A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 10, 2015. The record remained open until April 21, 2015, to give Applicant an opportunity to submit additional documents. On April 20, 2015, he submitted two additional exhibits that I marked as AE B and AE C, and admitted without objection.

Procedural Rulings

1. Department Counsel requested administrative notice (AN) of facts concerning Somalia. She provided four supporting documents to show detail and context for those facts (HE 1.) Applicant did not object to the request or documents, and I granted Department Counsel's request. (Tr. 11.)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004), and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

2. Based on Applicant's testimony during the hearing, Department Counsel moved to amend the SOR to add two additional allegations. They are as follows:

- (1) SOR ¶ 1.d. Your son and daughter are citizens of Somalia, residing with you in the United States.
- (2) SOR ¶ 1.e. Your wife's nephew is an undocumented person, who is residing with you in the United States.

The above motion was granted. (Tr. 48-55.)

Findings of Fact

In his Answer, Applicant admitted the allegations contained in SOR ¶¶ 1.a through 1.c. His admissions, including those made in a July 3, 2013 Counterintelligence Focused Security Screening Questionnaire (CFSSC), and in a July 25, 2013 Personal Subject Interview (PSI), are incorporated herein as findings of fact. (Answer; GE 4.)

Applicant was born in Somalia in 1964. He is 51 years old. After graduating from high school, he served in the Somalian National Guard from 1987 to 1988, as required by law. In 1996 Applicant immigrated to the United States as a refugee. He became a naturalized U.S. citizen in 2008. He is self-employed in his barbershop. In May 2015 he graduated from college with a bachelor's degree. (Tr. 15.)

Applicant has been married three times. His first two wives were citizens and residents of Somalia. They now live in Kenya. He married each of them in the early 1990's, while living in Somalia and subsequently divorced them. He has a child from each marriage. His son and daughter are citizens of Somalia, residing with him in the United States. He sponsored them for permanent residence status in the United States. His daughter became a permanent U.S. resident in 2010, and his son became one in 2011. (Tr. 23-24.) Both mothers of these children consented to the children's move to the United States. He visited them when they were living in Kenya in 2008 and 2009. (Tr. 26; GE 2, GE 4; AE B, AE C.)

In 1998 Applicant married his third wife. She was born in Somalia and became a naturalized U.S. citizen in 2007. They have six children, all of whom are citizens and residents of the United States. His wife works in nursing. (GE 2.)

Applicant's parents were born in Somalia. His father is deceased. His mother is a naturalized U.S. citizen since 2002. She resides here. Applicant has seven siblings, all of whom were born in Somalia, and are naturalized U.S. citizens residing here. He has infrequent communication with them. (Tr. 59-60; GE 2, GE 4.)

Applicant's wife's nephew has resided with Applicant since 2010. He was born in Somalia. His mother lives in Kenya and his father's whereabouts are unknown. He entered the United States illegally and was held by the U.S. authorities under a deportation order until Applicant intervened, and agreed to allow the nephew to reside with him. The nephew's one-year work permit expired in April 2013. Neither Applicant nor his wife is sponsoring him for citizenship. Applicant admitted that he has an undocumented person living with him, whom he supports. (Tr. 28-29, 33, 39, 52; GE 2; AE C.)

In 2005 Applicant started sending money to two cousins, who are citizens and residents of Somalia. They told him they were struggling financially because of their large families. He sent his male cousin about \$150 a month, and his female cousin something less. (Tr. 34-35.) Between 2005 and July 2013, Applicant sent approximately \$20,000 to the cousins. (GE 4.) He telephoned them monthly to learn if they received the money he sent. (GE 2.) In May 2013 Applicant visited those cousins in Somalia, staying with them for almost a month. (Tr. 30-31.)

Applicant's grandfather owned property in Somalia with an estimated value of \$35,000. According to Applicant, in 2006 he learned from his male cousin that he inherited that property from his grandfather, who died in 1994. (Tr. 40-41.) While visiting his cousins in May 2013, he asked to see his grandfather's will to confirm that he had inherited the property. They never produced any document verifying that he has an

ownership interest in the property. (Tr. 39, 43, 57, 59.) In his July 2, 2013 e-QIP, Applicant stated that he intended to build on the property. In his July 3, 2013 CFSSC, he said that he intended to sell the property. (GE 1, GE 4.)

During his testimony, Applicant explained the inconsistency between his e-QIP statement and his statement in the CFSSC regarding what he intended to do with the property. He said he wanted to either build on it or sell it. (Tr. 43.) He said about six months after returning home from the May 2013 visit, he spoke to one of the cousins and realized that there are no papers documenting his interest in the property. (Tr. 68-69.) He thinks his male cousin “schemed” to have him believe he owned the property, so that he would continue sending them money. (Tr. 57-58.)

Applicant told an investigator on July 25, 2013, that he would no longer send his female cousin money because he learned during the May 2013 visit that she was married and did not tell him. (GE 2.) He would continue sending money to his male cousin. (GE 2.) While testifying, he said he also stopped sending his male cousin money after the May 2013 visit. He did not recall telling the investigator that he intended to continue sending money to his male cousin. The last time he sent any funds to either cousin was in 2013. (Tr. 38.) He said he no longer has contact with his cousins because he feels betrayed by them. (Tr. 70.)

Applicant owns two houses in the United States, one of which is paid. (Tr. 46.) In his CFSSC, he stated that his real estate had a value of \$231,500. (GE 4.) He does not have any savings accounts, but has a 401(k) with about \$6,000 to \$7,000 in it. (Tr. 48.) He has owned his barber business since 2009. (Tr. 21-22.)

Applicant provided no evidence concerning the quality of his professional performance or career, or the level of responsibility his duties entail. He submitted no objective character references describing his judgment, trustworthiness, integrity, or reliability.

Somalia

I take administrative notice of the facts set forth in the Administrative Notice documents concerning Somalia, which are incorporated herein by reference.

Of particular significance are Somalia’s history of political unrest, and the presence of al-Shabbah, a terrorist organization, which continues to assert power and intimidation within the country and the bordering country of Kenya. Safety and security are key issues because this terrorist organization targets United States interests in Somalia and in Kenya by suicide operations, bombings, assassinations, assaults, and hostage taking. At this time, the risk of terrorist activities remains extremely high. The country’s human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. Few sections of Somalia are safe or immune from violence, and the government has difficulty enforcing the rule of law.

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, these guidelines are applied 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) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 classified information 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. Directive ¶ E3.1.15 states that, "[t]he 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 applying 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination 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 Influence

AG ¶ 6 explains the security concerns pertaining to foreign influence as follows:

Foreign contacts and interest 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. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 sets out four conditions that could raise a security concern and may be disqualifying in this case:

(a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(d) 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

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

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 or inducement. The risk of coercion, persuasion, or duress is greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or is a known terrorist haven. The relationship of Somalia with the United States, and the prominence of organized terrorism there, place a significant burden of persuasion on

Applicant to demonstrate that his relationships with family members living in Somalia, or holding Somalian citizenship and residing in the United States do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist family members with ties to Somalia.

While there is no evidence that intelligence operatives or terrorists from Somalia seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Somalia has an enormous problem with terrorism. Applicant's relationship with two cousins living in Somalia, to whom he provided financial support for eight years, and with his two children, who are Somalian citizens residing with him but whose mothers continue to live as Somalian refugees in Kenya, create substantial potential for conflict of interest. These relationships are sufficiently close in nature to raise a security concern about his desire to assist those family members by providing sensitive or classified information. This potential conflict is exacerbated by his nephew's undocumented status and residency with him because it demonstrates Applicant's willingness to violate U.S. law in order to assist even a non-immediate family member. The evidence is sufficient to raise a potential security concerns under AG ¶¶ 7(a), 7(b), and 7(d).

Applicant may have an ownership interest of \$35,000 in a piece of real estate located in Somalia. The evidence is sufficient to raise a potential security concern under AG ¶ 7(e).

AG ¶ 8 lists four conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

(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 U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., 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.

AG ¶ 8(a) does not have application under the facts in this case. Applicant's two cousins are citizens and residents of Somalia. The family's physical presence in that country creates a heightened potential for exploitation, inducement, manipulation, pressure, or coercion, as there is strong evidence of suicide bombings, and human rights abuses toward citizens and residents. Thus, Applicant's family interests could be threatened to the point that he would confront a choice between their interests and those of the United States should adverse forces learn of Applicant's work for the U.S. Government. His two eldest children are Somalian citizens whose mothers are Somalian refugees living in Kenya. His nephew, who was born in Somalia, is residing with him illegally. His relationship with these family members, especially his nephew, is ongoing. Their ties to Somalia create further opportunity for Applicant to be placed in a position of having to choose between the interests of his children and nephew, and the interests of the United States.

AG ¶ 8(b) provides some mitigation. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S.," such that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." He has lived in the United States since 1996 and became a citizen in 2008. His wife is a naturalized U.S. citizen, and his six younger children are U.S. citizens. His mother and siblings are naturalized U.S. citizens, residing here. He has some economic ties to the United States, including a financial interest in two pieces of real estate. He has a small amount of money in a 401(k). He has been attending a U.S. university and recently earned a bachelor's degree. He owns a business here. While those factors weigh in Applicant's favor, he still has strong ties to his Somalian family members, and the two elder children who reside with him. He has spent over \$20,000 supporting his cousins. He is harboring his undocumented nephew in the United States.

AG ¶ 8(c) does not provide mitigation for the security concerns raised. From 2005 to 2013, Applicant maintained monthly contact with his cousins, who are citizens and residents of Somalia. During those eight years, he sent them about \$20,000. In 2013 he visited them. Those contacts have been sufficiently frequent that they cannot be construed as casual. Although he stated that he has not contacted them since May 2013, that assertion is not sufficient to overcome a long history of connection and support. Further, he has daily contact with his nephew and Somalian children, as they reside with him.

AG ¶ 8(f) has partial application. Applicant believed that from 2006 until 2013 he had a \$35,000 interest in a piece of real estate in Somalia. He claimed that, after his visit in 2013, he realized that he does not have any document verifying his interest in that property. Given the amount of that alleged interest, in comparison to the approximate \$240,000 or more of assets he has in the United States, the possible ownership of property in Somalia is unlikely to create a conflict or be used effectively to

influence, manipulate, or pressure him. It does not, however, diminish the security risks associated with his Somalian cousins, children, and nephew.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Some mitigating evidence weighs in favor of granting Applicant a security clearance. He is an intelligent, articulate, and hardworking person, who has lived in the United States for 19 years. He has owned a business since 2009. He has been attending a local college and earned a degree. He lives with nine members of his immediate family, seven of whom are U.S. citizens. He has accumulated at least \$240,000 of assets in the United States.

Five circumstances weigh against Applicant in the whole-person analysis. First, there is a significant risk of terrorism and human rights abuses in Somalia. More importantly for security purposes, terrorists there are hostile to the United States, engage in violence against its citizens and residents, and actively seek classified information. Terrorists and friendly governments could attempt to use Applicant's family members to obtain protected information and compromise Applicant's responsibilities to the United States.

Second, Applicant had numerous connections to Somalia before he immigrated to the United States in 1996. He spent his formative years there and attended high school there. Third, two cousins for whom he has provided at least \$20,000 of financial support over eight years, are citizens and residents of Somalia. He maintained regular contact with them during those years. Two of his children remain Somalian citizens, while residing here. Fourth, Applicant's conflicting statements about his intentions for the property he might have inherited and confusion over what he told an investigator about continuing financial support for his cousins raise additional concerns about his

truthfulness. Fifth and most troublesome, is the fact that his nephew, who entered this country illegally, has been living with him as an undocumented alien.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, Applicant has not sufficiently mitigated the security concerns pertaining to foreign influence. Overall, the record evidence leaves doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under Guideline B.

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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Shari Dam
Administrative Judge