

KEYWORD: Foreign Influence; Financial

DIGEST: Applicant failed to mitigate security concerns raised by the presence in Uganda of members of his extended family and his inability or unwillingness to satisfy his delinquent debts. Clearance is denied.

CASENO: 02-27143.h1

DATE: 01/13/2005

DATE: January 13, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27143

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez Jr., Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant failed to mitigate security concerns raised by the presence in Uganda of members of his extended family and his inability or unwillingness to satisfy his delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 25 May 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision--security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 27 July 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 8 October 2004. On 14 December 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 21 December 2004.

FINDINGS OF FACT

Applicant is a 39-year-old employee of a defense contractor. He was born and raised in Uganda. In 1985, during his final year in high school, he voluntarily joined the National Resistance Army (NRA) that was fighting to overthrow the dictatorship that ruled Uganda. He rose to the rank of lieutenant. After the victory of the NRA, Applicant became disenchanted with the socialist government and its policies--refusing to let him and other soldiers return to school, bringing in the North Korean Army to train them, imposing socialist ideas, and not allowing any association with foreigners, especially Americans. Applicant expressed his discontent and was imprisoned from June 1987-August 1988, when he escaped. He traveled through several countries, finally arriving in Botswana in December 1988. He lived in a United Nations (UN) refugee camp until September 1990 when he attended the University of Botswana at UN expense. While there, he met the woman he would marry. She is the daughter of a professor at the university. Ex. 2.

Applicant came to the U.S. in 1992 as a political refugee and was joined by his wife in 1994. Applicant attended school and graduated with a degree in computer science in December 2000. He became a naturalized U.S. citizen in 1999. Applicant's wife is a student in pharmacy at a local university. She obtained her permanent U.S. residence in 2000 and

expects to become a U.S. citizen in 2005.

Applicant and his wife have three children, all under the age of 10 and born in the U.S. Applicant has a 16-year-old son by a woman who lives in Uganda. That son lives in Uganda with Applicant's brother. Applicant's mother, sister, and brother are citizen residents of Uganda.

Applicant had no contact with his family in Uganda from 1988 until 1995. He now sends his brother, an accountant with the Ministry of Finance, money to assist in paying for necessities for Applicant's son. Applicant talks via telephone with his son every other month. He is sponsoring his son for immigration to the U.S. Applicant has four other brothers in Uganda, two are still in high school, one is in college, and the other has graduated but is not employed. Applicant's mother is a homemaker and farmer. His sister works for a social organization dealing with AIDS. Applicant sends his mother \$100 every other month. Applicant's mother-in-law is a nurse and is a citizen resident of Uganda. Two of his sisters-in-law live in Uganda. His father-in-law, two brothers-in-law, and a sister-in-law live in South Africa, but are still citizens of Uganda. Applicant visited his family in Uganda in 2000 and 2002, traveling on his U.S. passport. He does not have any other passport.

Uganda is a nation plagued by threats to personal safety by insurgent groups. Ex. 6 at 1. "The Government's human rights record remained poor; although there were some improvement in a few areas, serious problems remained." Ex. 7 at 1.

The chart below lists the allegations under Guideline F and their current status:

¶	Reason; Amount	Status	Record
2.a	Credit card charged off \$416.45	Unpaid	Answer
2.b	Store credit charged off \$293	Unpaid	Answer
2.c	Collection acct \$679	Unpaid	Answer
2.d	Bank bad debt \$4,468--repossessed car	Unpaid--car repossessed	Answer
2.e	Unpaid judgment for rent \$1,600	Claims paid in part--no documentation	Tr. 15-16
2.f	Car finance and repossession \$3,572	Claims it is same as 2.d	Tr. 19
2.g	School taxes (2000) \$650	Unpaid	Answer
2.h	Bad check complaint	Paid \$365/Dismissed	SOR/Answer
2.i	Car finance and repossession \$4,207	Co-signee on loan for friend	Answer; Tr. 19

Applicant helped a friend he met in the refugee camps, who is now a U.S. citizen, by cosigning a car loan (¶ 2.i). Applicant's friend was unable to make the payments and the car was repossessed. Applicant also purchased a car on which he could not make all the payments and it was repossessed (¶ 2.d). After paying his current bills at the end of the

month, Applicant has no money with which to pay down his delinquent debts. Tr. 22.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline B--Foreign Influence

In the SOR, DOHA alleged Applicant's wife is a citizen of Uganda (§ 1.a); his mother, sister, and brothers (§ 1.b), his son (§ 1.c), his mother-in-law and two sisters-in-law (§ 1.f) are citizen residents of Uganda; his wife's father, brothers, and a sister are citizens of Uganda living in South Africa (§ 1.e); he is sponsoring his son for immigration to the U.S. (§ 1.d); he provides financial support to his mother (§ 1.g) and his son (§ 1.h); he served as an officer in the NRA (§ 1.i) and was imprisoned by the government (§ 1.j); and he traveled to Uganda in 2000 (§ 1.k) and was planning to do so in 2001 (§ 1.l). A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive § E2.A2.1.1.

The Government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B--Applicant has immediate family members (mother, brother, sister, and son) who are citizens, residents, or present in a foreign country and others (his in-laws) to whom he is bound by affection or obligation. DC E2.A2.1.2.1. There is a rebuttable presumption that a person has ties of affection for, or at least obligation to, his wife's immediate family members. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant did not rebut the presumption that he has ties of obligation to his wife's family members who are citizens, residents, or present in a foreign country. *Id.* And Applicant has a relative--his brother--who works for a foreign government--Uganda. DC E2.A.2.1.2.3

While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb. 8, 2001).

The security concerns raised by Applicant's foreign associates may be mitigated when they are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person involved and loyalty to the U.S. MC E2.A2.1.3.1. Applicant's foreign associates are not "agents of a foreign power." *See* 50 U.S.C. § 1801(b).

In assessing the vulnerability to exploitation of Applicant's associates, it is helpful to consider several factors, including the number of associates, the character of their relationship, and the character of the government and the status of the country involved. Uganda is a nation that contains insurgent groups that specifically target U.S. citizens. Ex. 2 at 1. The government's human rights record remains poor. Ex. 3 at 1.

Determining suitability for a security clearance requires a predictive judgment--it is an attempt to determine who might pose a security risk at some future time, based on certain established guidelines. Applicant appears to be a good father, son, and brother who is concerned about the quality of life of members of his family. As noted above, the decision to deny an individual a security clearance is not a judgment of an applicant's loyalty. Exec. Or. 10865 § 7. It is merely a determination the applicant has not met the strict guidelines set out by the President and the Secretary of Defense.

Applicant was unable to demonstrate that the members of his immediate family, and those to whom he is bound by obligation, living in Uganda are not in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to these foreign associates and loyalty to the U.S. I find against Applicant on ¶ 1.

Guideline F--Financial Considerations

In the SOR, DOHA alleged Applicant had three delinquent debts charged off (¶¶ 2.a-2.b, 2.d) totaling more than \$5,000; a delinquent debt placed for collection of \$679 (¶ 1.c); two vehicles repossessed for nonpayment owing a total of more than \$7,500 (¶¶ 2.f, 2.i); an unpaid judgment of \$1,600 for apartment rent (¶ 1.e); delinquent on school taxes for 2000 in the amount of \$650 (¶ 2.g); and a complaint for bad checks (¶ 2.h). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Applicant notes that he was not familiar with credit when he came to the U.S. and that he intends to pay off his debts after his wife completes her education in pharmacy and is able to get work. There is no evidence that he has paid off these debts or is making any serious effort to do so. His testimony clearly shows that he is more concerned with improving his family's quality of life than he is with taking care of his debts. None of the mitigating conditions apply. Under all the circumstances, I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a- 1.i: Against Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a-2.i: Against Applicant

DECISION

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 or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).