

DATE: October 26, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29737

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant came to the U.S. in 1972 to study. He married a native born U.S. citizen, raised two U.S. born children, became a U.S. citizen in 1979, and has had a security clearance since 1982. Applicant mitigated foreign influence security concerns raised by his brothers and sisters who are citizen residents of Ghana, his infrequent travels to Ghana, and his relationship with a tribal king there. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive.⁽²⁾ Applicant answered the SOR in a writing notarized on 9 February 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 15 July 2004. On 8 September 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 17 September 2004.

FINDINGS OF FACT

Applicant is a 54-year-old subcontract manager for a defense contractor. He has held a security clearance continuously since 1982.

Applicant was born and raised in Ghana. His father was the state secretary for one of Ghana's tribes. In 1970, Applicant enrolled in a polytechnic institute where he studied engineering concepts. Applicant's uncle, a vice consul for Ghana in the U.S., sponsored Applicant into the U.S. on a student visa. Applicant arrived in January 1972 and started university studies in September of that year. Applicant roomed with P, a boyhood friend from Ghana. Applicant graduated with a degree in industrial engineering in 1977. He became a naturalized U.S. citizen in June 1979.

Meanwhile, in 1973, Applicant married a native-born U.S. citizen. The couple has been married 31 years. They have

two adult children who were born, raised, and educated in the U.S. Applicant's wife visited Ghana once in 1977. Their two sons have never visited Ghana. After he became a U.S. citizen, Applicant visited Ghana in 1989 when his father was ill, 1990 for his father's funeral, in 1996 for his brother's funeral, and in 1999, always traveling on his U.S. passport.

Applicant is the secretary of the Ghana Society of the central part of the state in which he resides. The aims and objectives of the society include the fostering of relationships among Ghanians and the African community in the state, to work for the peace, progress, and prosperity of Africa and Ghana, and to promote good will between the U.S. and the Ghanaian and African peoples. It is a non-political organization.

In 1999, Applicant's friend P, returned to Ghana to bury his brother, who was the king of one of the tribes of Ghana. P was selected to replace his brother as king. P renounced his U.S. citizenship and took up residence in Ghana. After obtaining permission from his employer, Applicant, who was in England on business, flew to Ghana to be present at the coronation festivities. The king has no political power. It is a purely cultural and tribal position. Since 1999, Applicant has acted as the guardian for P's children, who are U.S. citizens attending schools in the U.S. In July 2002, P visited the west coast of the U.S. on business. Applicant contacted friends and associates in that area to greet the king. Although Applicant hoped to visit with the king, all they could arrange was a telephone call while P was awaiting his plane back to Ghana.

Applicant has two brothers and three sisters who are citizen residents of Ghana. His sisters are housewives. One brother is a mason; the other works for the state owned oil company. Applicant maintains monthly contact with them via telephone, e-mails, or letters. Applicant's father and uncle are deceased. None of Applicant's family are agents of a foreign power. Applicant does not own any property or have assets in Ghana. He has not provided his family in Ghana any financial support, nor has he received any from them.

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

In the SOR, DOHA alleged Applicant maintained contact with his brothers and sisters who are citizen residents of Ghana (¶ 1.a); his uncle was Vice Counsel at the Ghana Consulate in New York (¶ 1.b); from 1961-62, his father was state secretary of a district in Ghana (¶ 1.c); his close friend is now king of the district in Ghana (¶ 1.d); he planned to visit with the king when he came to the U.S. for a visit (¶ 1.e); he is acting guardian for the king's son, a college student in the U.S. (¶ 1.f); he is secretary of the Ghana Society of Central New York (¶ 1.g); and he traveled to Ghana in 1999 (¶ 1.h). 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 established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has immediate family members who are citizen residents of a foreign country. DC E2.A2.1.2.1.

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 (Feb. 8 2001) at 33-34. It is a mitigating condition if the immediate family members are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to her family members and loyalty to the U.S. MC E2.A2.1.3.1.

In determining whether the family members are vulnerable to exploitation, a judge should consider, among other things, the character of the government and foreign country involved. Ghana is a democracy and has enjoyed good relations with the U.S. since its founding in 1957. Since the establishment of the Fourth Republic in 1993, the democratic institutions have operated well.

The Appeal Board has cautioned judges against making "overly simplistic distinctions between 'friendly' nations and 'hostile' nations" when deciding foreign influence cases. ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Relations between nations often change, even friendly nations may have "profound disagreements" with the U.S. over some issues affecting their national security, and not all cases of espionage against the U.S. involve nations hostile to the U.S. *Id.* "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 is the secretary of the Ghana Society of his region. This society is not related to the Government of Ghana. Rather, it is an organization attempting to encourage respect for Ghanaian heritage and assistance for those immigrating to the U.S. from Ghana. *Cf.* ISCR Case No. 99-0454, 2000 DOHA LEXIS 221 at *16 (App. Bd. Oct. 17, 2000) (evidence of foreign preference must go "beyond mere sentiment, respect for his [foreign] heritage, or symbolism").

Security clearance decisions are not an exact science. Instead, they are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *Egan*, 484 U.S. at 528-529. In this particular case, Applicant has lived in the U.S. for more than 30 years, has been a U.S. citizen for 25 years, and has held a security clearance for the past 22 years without adverse incident. The government is not estopped from making an adverse clearance decision when there have been prior favorable adjudications. ISCR Case No. 01-24504 at 3 (App. Bd. Feb. 11, 2003). At the same time, one should not minimize the importance of an applicant's past conduct, as the holder of a security clearance, in reaching a security suitability determination. Although Applicant has immediate family members who are citizen residents of Ghana they do not appear to be in a position of vulnerability. Although Applicant's uncle was politically connected, both he and Applicant's father have long been deceased. Nor does his relationship with the king, who is a tribal rather than political leader, represent a security risk. Although the relationship is more than casual, under all the circumstances, I do not believe that would place Applicant in a position of having to choose between loyalty to his friend and loyalty to the U.S.

After carefully evaluating the evidence in this case, including the character of the Ghanaian government, the relative stability of the country, the unlikelihood of the government or other foreign organizations attempting to exploit his family, Applicant's long-term ties to the U.S., his job performance and security clearance history, and the whole person concept, I conclude Applicant has mitigated the foreign influence security concerns raised by his ties to Ghana.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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).

2. The SOR is undated.