

DATE: May 17, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30545

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's father, mother, brothers, and sisters are citizens of and reside in Sierra Leone. Applicant has two sons that may reside in Sierra Leone, if they are still alive. His mother lived with him in the United States before returning to Sierra Leone to be cared for by her children. He has no contact with his father and sons, and limited contact with his mother and siblings. Sierra Leone is a war torn lawless country. Applicant has not met his heavy burden to mitigate security concerns based on the foreign influence of immediate family members. Clearance is denied.

**STATEMENT OF THE CASE**

On August 27, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on September 3, 2004. The SOR alleges security concerns under Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on September 16, 2004. He admitted three allegations, and admit in part and denied in part the other three allegations under Guideline B. Applicant provided information on each of the allegations. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on October 28, 2004. Applicant received a complete file of relevant material (FORM) on November 10, 2004, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He responded on December 9, 2004, with further information to explain the allegations in the SOR. Department Counsel, on December 14, 2004, did not object to Applicant's response to the FORM. The case was assigned to another Administrative Judge on December 29, 2004, and reassigned to me on May 5, 2005.

## FINDINGS OF FACT

Applicant is a 43 year old computer systems analyst for a defense contractor. He was born in Sierra Leone in 1961, came to the United States in 1989, and became a United States citizen in June 1996. He worked in various service jobs, attended a technical school in the United States receiving a technical diploma in 1996, and subsequently was employed by the defense contractor. There is no indication Applicant has ever returned to Sierra Leone since he left the country, and certainly not since he became a United States citizen. [\(1\)](#)

Applicant's father, two brothers, and two sisters are citizens of and reside in Sierra Leone. He has limited communications with his father and states he is not bound to him by affection. Both brothers work for the Sierra Leone government, one brother for the Economic Development and Planning Ministry, and one brother for the Fishing and Natural Resources Ministry. He has limited contact with them, but is bound by normal sibling affection to them.

Applicant has limited communications with his sisters in Sierra Leone. He has provided them limited financial support in the past to buy food and other necessities. Both sisters are self-employed and he is bound to them by normal sibling affection.

Applicant has two sons who live in Sierra Leone. Applicant has not communicated with his sons in a long time. Because of the war torn situation in the country, he is unsure if they are alive. If they are alive, they would be in their twenties. [\(2\)](#)

At the time the Applicant submitted his security clearance application and was interviewed by a security investigator, his mother resided with him in the United States. His mother became ill and moved back to Sierra Leone on March 29, 2004, so one of Applicant's sisters could care for her. Applicant's mother is now a citizen of and resides in Sierra Leone. [\(3\)](#)

Sierra Leone is a country slowly recovering from a ten-year civil war. While security in the country continues to improve, there is wide-spread poverty, government instability, crime, business fraud, and the potential for physical harm to citizens and visitors. Domestic fighting among disparate rebel groups, warlords, and youth gangs have created insurgencies, street violence, looting, arms trafficking, and ethnic conflict. Political rallies and street demonstrations have the potential for danger. While there is no evidence the government of Sierra Leone targets United States citizens for economic or political espionage, the general financial and political instability of the country has an impact on the lives of citizens and can make them vulnerable to pressure, coercion, exploitation, and duress. [\(4\)](#)

## POLICIES

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." [\(5\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(6\)](#)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(7\)](#) An administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or [\(8\)](#)

duress; and (9) the likelihood of continuation of recurrence.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(9)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(10)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(11)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(12)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."<sup>(13)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(14)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B - A security concern exists when an individual's immediate family and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline B. Applicant's father, mother, brothers, sisters, and sons<sup>(15)</sup> are citizens of and reside in Sierra Leone and brings this matter under Foreign Influence Disqualifying Condition Directive ¶ E2.A2.1.2.1 (*an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in a foreign country*). An immediate family member includes spouse, father, mother, sons, daughters, brothers, and sisters.<sup>(16)</sup> Since Applicant's parents, siblings, and sons are immediate family members and citizens of and reside in Sierra Leone, I conclude the disqualifying conditions has been established.

The Foreign Influence Mitigating Conditions that must be evaluated for Applicant are Directive ¶ E2.A2.1.3.1 (*a determination that the immediate family members 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(s) involved or the United States*); and Directive ¶ E2.A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*). Because of the political turmoil and lawlessness in Sierra Leone, Applicant has a heavy burden to demonstrate that the immediate family members in Sierra Leone do not pose a security risk as agents of a foreign power or are not in a position to be exploited forcing Applicant to chose between loyalty to the United States and his family members.<sup>(17)</sup> While there is no evidence groups, gangs, or political factions in Sierra Leone has targeted Sierra Leone citizens to obtain information from citizens of the United States, the federal government does not have to wait until there is specific proof of targeting for there to be a security concern.

Applicant's immediate family members in Sierra Leone can be placed in two categories. First are his two sons. Applicant has had no contact with them for many years and he is not even sure they are alive. Because of the terrible

bloodshed and massacres in the country, it is not unreasonable to believe they are no longer alive. Since Applicant has not even tried to determine if they are alive, it is clear he is not bound to them by love or affection. While they may be in a position to be exploited by a foreign power if alive, Applicant's lack of affection for them shows he could not be forced to chose between his sons and his loyalty to the United States. As to the sons, I conclude Applicant has mitigated any security concerns.

The second category are his parents and his siblings. Applicant has no contact with his father, and little contact with his brothers and sisters. There are no indications the father or sisters are agents of a foreign power. While his brothers work for ministries of the Sierra Leone government, there is no indication they are other than normal government workers and thus not agents of a foreign power. Applicant does not provide details of his relationship with his father, but does state he has no affection for his father. His lack of contact with and affection for his father mirrors his lack of affection for his sons. I conclude his father does not create a security concern because the lack of affection would not place Applicant in a position to chose between his loyalty to his father or the United States.

Applicant does not provide details of his relationship with his mother, brothers, or sisters but does state he has affection for them. He has contact with them, although limited. He admits to providing limited financial support in the past to his sisters. For Applicant to bring his mother to the United States to live with him shows a high degree of affection for her. She returned to Sierra Leone when she became ill so her daughter could care for her. Applicant entrusting the care of his mother to his sisters shows a high degree of affection for his sisters. Because of the lawless nature of life in Sierra Leone, Applicant's siblings and mother could be exploited by foreign powers or entities in a way that could force Applicant to choose between his loyalty to the United States and the family members. Applicant has not met his heavy burden to establish that his close ties to his mother and siblings in Sierra Leone are not a security concern and that he could not be forced to chose between his family in Sierra Leona and his loyalty to the United States. I conclude Applicant has not mitigated the foreign influence disqualifying condition concerning his mother and siblings.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

### **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

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

### **DECISION**

In light of all of the circumstances presented in the record of this case, it is clearly not consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. FORM, Item 4 (Security clearance application, dated May 28, 2002).
2. FORM, Item 3, (Applicant's answer to SOR, dated Sep. 16, 2004).
3. *Id.* at paragraph 1f.
4. FORM, Item 6 (World fact book, Sierra Leone, dated Oct. 19, 2004); Item 7 (US Department of State Consular information sheet, dated Feb. 13, 2003).
5. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. Directive ¶ E2.2.1.
7. *Id.*
8. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
9. *See* Exec. Or. 10865 § 7.
10. Directive ¶ E3.1.14.
11. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
12. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
13. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
14. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
15. For the purpose of determining the applicability of the disqualifying condition, it is assumed Applicant's sons are still alive and citizens and residents of Sierra Leone.
16. Directive ¶ E2.A2.1.3.1.
17. ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002) at 8.