DATE: February 10, 2004

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 02-30949

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

Peregrine Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, employed as an e-mail administrator by a defense contractor, came to the U.S. as a refugee from Eritrea in 1983. He became a U.S. citizen. Applicant's Eritrean-born wife is a U.S. citizen, as are their three children, who were all born in the U.S. Applicant's mother is a Eritrean citizen who is a legal permanent resident of the U.S. One of Applicant's sisters is a Eritrean citizen living in Eritrea. Another sister is an Eritrean citizen living in a foreign country, where her husband is the Eritrean ambassador to that country. Applicant's ties of affection and obligation to family members residing in Eritrea or connected to a foreign government create the potential for foreign influence that could result in the compromise of classified information. 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 May 16, 2003, under the applicable Executive Order[(1)] and Department of Defense Directive,[(2)] DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on June 4, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on July 28, 2003. On September 10, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the Government presented three exhibits for admission and five documents for administrative notice. The Applicant presented no exhibits and three witnesses.

Applicant appeared pro se at his hearing He said he was unable to find an attorney to represent him. (Transcript 157-158.). In response to my questioning, he testified he learned English after immigrating to the United States as a young

man. He said his English facility has been determined through testing to be equivalent to that of a fourth grade child who is a native English speaker. (Transcript 159.) Accordingly, I have taken this into account in reaching my decision.

During the hearing, the Government stated that it would not object if the record were left open so that Applicant could provide proof that one of his brothers was not a permanent resident alien, as alleged in the SOR, but a U.S. citizen. (Transcript 75-78.) At the close of the hearing, I left the record open until close of business on Monday, September 22, 2003, so that Applicant could provide further clarification of the citizenship status of one of his brothers who resides in the U.S. By facsimile transmission Applicant submitted a photocopy of his brother's U.S. passport and a signed notarized letter from the brother stating that he is a naturalized American citizen. The Government did not object to the admissibility of Applicant's post-hearing evidence. Accordingly, the two documents, along with a transmittal cover sheet from Applicant addressed to Department Counsel, were admitted into evidence as Applicant's Exhibit A-1 and A-2. DOHA received the transcript(Tr.) of the proceeding on September 22, 2003.

FINDINGS OF FACT

The SOR contains six allegations of disqualifying conditions charged under Guideline B, Foreign Influence. Applicant admits allegations 1.a., 1.b., and 1.c., denies allegations 1.d. and 1.e., and denies in part and admits in part allegation 1.f. of the SOR. Applicant's admissions are incorporated herein as findings of fact.

Applicant left his home in the province of Eritrea in Ethiopia[(3)] as a teenager. At the time, Eritrea was at war, and he walked to the Sudan, where he lived as a refugee for three years before making application for admission to the United States. (Tr. 65-66.) He came to the United States in 1983 and became a U.S. citizen.[(4)] He attended a junior college for five years and received a degree in 1989. (Ex. 1, at 2.) He married a woman of Eritrean heritage who is also a U.S. citizen. They have three children, all born in the United States. (Ex. 1, at 2-3.)

Applicant's first job with his current employer, a government contractor, began in 1989. He was employed as a mail room clerk. (Ex. 1; Tr. 132.) He has worked for his current employer for over 13 years, and is now employed as an e-mail administrator. (Ex. 1, at 2.) Applicant presented three witnesses who have supervised or managed his work. All praised him highly for his good character and strong work ethic. (Tr. 124; 129; 135-36.)

Applicant was the first member of his family to immigrate to the United States. He then sponsored the immigration of his father, mother, two sisters, and two brothers. (Tr. 24.) Applicant's father is deceased. His mother is a citizen of Eritrea and lives in the United States as a resident alien. (Ex. 1, at 3, 5.) Applicant's four siblings residing in the United States are U.S. citizens. Applicant's mother resides in another State with one of Applicant's sisters who is a U.S. citizen. (Ex. 1, at 11, 12.) Applicant's mother visits him every two years or so and he speaks with her on the telephone approximately once every two months. (Tr. 48-49.)

Applicant has two sisters who are citizens of Eritrea. One sisters resides in Eritrea, where she lives with her husband, a U.S. citizen, and their children. They visit the United States every two or three years. (Tr. 37-38.) In 2000, the sister and her children were evacuated to the U.S. when conflict between Eritrea and Ethiopia made it unsafe for them to remain in Eritrea. (Tr. 39-40.) Applicant's second sister who is a citizen and resident of Eritrea resides at present in a foreign country with her husband, who is Eritrea's ambassador to that country. (Tr. 45.) Applicant did not list these sisters on his SF-86, which he completed and signed on May 3, 2002. He traveled to Eritrea to visit these sisters and their families in 1998.

Applicant denied holding dual Eritrean and United States citizenship. He said he is a citizen only of the United States, and he holds only a U.S. passport. (Tr. 20.) In 1991 he attended a meeting and signed a petition circulated in the United States among Eritrean emigres supporting independence from Ethiopia. He has taken no other action related to politics or governance in Eritrea. (Tr. 50-53.)

Applicant said he incorrectly identified himself, his wife, his four siblings living in the United States, and his parents-in-law as dual citizens of Eritrea and the United States when he filed his SF-86 electronically. He attributed the error to a software problem that made it difficult for him to distinguish between country of birth and country of citizenship. (Tr. 58-59; 79-84.) In his answer to the SOR, he denied that his wife, his parents-in-law, and three of his siblings living in

the United States were dual citizens of Eritrea and the United States. He stated they are U.S. citizens of Eritrean origin. Although I was not asked by the parties to take administrative notice, I observe that reliable information available to the agency states that Eritrea does not recognize dual citizenship and that one of the grounds for involuntary loss of Eritrean citizenship is the voluntary acquisition of citizenship of another country.[(5)] After the hearing, Applicant submitted evidence showing that his fourth sibling living in the United States is also a U.S. citizen and holds a U.S. passport. (Ex. A-1 and A-2.)

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 personal security guidelines, as well as the disqualifying conditions and mitigating conditions 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.

Adjudicative Guideline B, Foreign Influence, applies to this case. Under Guideline B a security concern may exist 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. E2.A2.1.1.

Guideline B identifies several conditions that raise security concerns in this case:

An immediate family member of a person to whom the individual has close ties of affection or obligation is a citizen of or resident in a foreign country (E2.A2.1.2.1.);

Relatives, cohabitants, or associates who are connected with any foreign government. (E2.A2.1.2.3.); and

The individual seeking clearance displays conduct which may make him vulnerable to coercion, exploitation, or pressure by a foreign government (E2.A2.1.2.6.).

Guideline B mitigating conditions that might apply to this case include:

A determination that the immediate family members (mother, sisters) or associates in question 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 persons involved and the United States (E2.A2.1.3.1); and

Contact and correspondence with foreign citizens are casual and infrequent (E2.A2.1.3.3.).

CONCLUSIONS

In the SOR, DOHA alleges, under Guideline B of the Directive, that Applicant's close familial ties with and obligations to citizens of Eritrea created the potential for foreign influence that could result in the compromise of classified information. The SOR alleged that Applicant has one sister who is a citizen and resident of Eritrea (1.a.); that Applicant has a another sister who is a citizen of Eritrea who resides with her husband in a foreign country where the husband is the Eritrean ambassador to that country (1.b.); and that Applicant's mother is a citizen of Eritrea residing in the United States (1.c.). The SOR alleges in subparagraph 1.f. that Applicant has aunts, uncles and cousins who are citizens of Eritrea who reside in the United States. Applicant denies he has aunts and uncles who are citizens of Eritrea who reside in the United States, but he admits he has cousins who are citizens of Eritrea who reside in the United States.

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that Eritrea is located in East Africa, where supporters of Al-Qaida and other extremist groups are active and there exists a continuing high potential for terrorist actions against American citizens. *See* United States Department of State, Public Announcement, "East Africa," dated July 21, 2003, submitted as Document II for administrative notice. Applicant's sister who is a citizen of Eritrea resides in Eritrea with her children and her husband, who is a U.S. citizen, creating a vulnerability for Applicant and the protection of classified information. Additionally, the foreign country where Applicant's brother-in-law is the Eritrean ambassador has historically acted in a hostile manner to U.S. security interests. A recent official Government document warns U.S. citizens against travel to or residence in that country since there has been evidence of hostility to the United States in some segments of the population and in some elements of the government of that country. *See* United States Department of State, Travel Warning, dated July 21, 2003, submitted as Document IV for administrative notice.

Applicant admits allegations of the SOR which raise security concerns under Guideline B, subparagraphs E2.A2.1.2.1 and E2.A2.1.2.3. Because of the political and economic organization of the country to which Applicant's sister's husband is ambassador, the livelihood of Applicant's sister and her husband depend upon their government connection, thus raising a concern under disqualifying condition E2.A2.1.2.3. Applicant's mother, a Eritrean citizen and resident alien in the United States, lives in the homes of her children who are naturalized American citizens. In many cases, these circumstances would be viewed as benign and not a security concern. However, Applicant's mother is also the mother-in-law of the Eritrean ambassador to a country hostile to American interests. Her status as a resident alien with children and grandchildren abroad in potentially dangerous circumstances could put Applicant in a position to be exploited by a foreign power or forced to choose between loyalty to her and Applicant's sisters abroad and the United States.

Applicant has been a good son to his mother, who is a citizen of Eritrea, and he has been a good brother to his six siblings, two of whom are citizens of Eritrea. Applicant's filial and fraternal conduct toward his family members has the potential to make him vulnerable to coercion, exploitation, or pressure by a foreign government under disqualifying condition E.2.A.2.1.2.6.

The record indicates that mitigating condition E2.A2.1.3.1 applies only in part to the facts of Applicant's case. While none of Applicant's immediate family members are agents of a foreign power, his sisters who are citizens of Eritrea are in positions to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his

family members and the United States. As Applicant's devoted actions toward his mother and siblings make clear, his relationships with them, while not frequent, are not casual. Thus, mitigating condition E2.A2.1.3.3. does not apply to Applicant's relationship with his mother, nor does it apply to his relationship with his sisters who are citizens of Eritrea and their families. The record evidence does not demonstrate conclusively that Applicant's relationships with his cousins who are citizens of Eritrea and residents of the United States are casual or infrequent.

Despite Applicant's sincere demeanor and his assurances that he is not a security risk, the circumstances of his situation argue otherwise. He has put forward no evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.a., 1.b., 1.c., and 1.f. under Guideline B of the SOR are concluded against the Applicant.

The SOR alleges in subparagraph 1.d. that Applicant's four siblings residing in the United States are dual citizens of Eritrea and the United States. The SOR alleges in subparagraph 1.e. that Applicant's wife and parents-in-law are also dual citizens of Eritrea and the United States. Applicant's SF-86 provided U. S. naturalization certificate numbers for his wife and three of his siblings. He testified at his hearing that his parents-in-law were U.S. citizens of Eritrean origin. (Tr. 58.) After the hearing, Applicant submitted persuasive evidence to show that the brother alleged in the SOR to be a permanent resident was in fact a U.S. citizen. (Ex. A-1, A-2.)

Applicant testified that Eritrea became a country long after he and some of his family members had emigrated. He became a U.S. citizen before Eritrea became a country. While some of Applicant's family members became U.S. citizens after Eritrea was formed, he was uncertain about how or his family members would renounce Eritrean citizenship. He stated that to the best of his knowledge, his four siblings who reside in the United States are U.S. citizens of Eritrean origin and not dual citizens of Eritrea and the United States. He also stated that to the best of his knowledge, his wife and parents-in-law are United States citizens of Eritrean origin and not dual citizens of Eritrea and the United States. He attributed the confusion over the dual citizenship allegations to his problems with the software used in completing his SF-86. The Government did not allege conduct demonstrating foreign preference under Guideline C of the Directive, nor did it provide evidence to show that Applicant's wife, his parents-in-law, or his four siblings living in the United States, all of whom are U.S. citizens, possessed Eritrean passports or exercised dual citizenship. I take administrative notice of a U.S. Department of State Consular Information Sheet provided by the Government stating that U.S. citizens born in Eritrea might be subject to obligations of Eritrean citizenship. (Document I for administrative notice, at 1.) Because of the ambiguous nature of the allegations and the absence of persuasive evidence to support them, I find for the Applicant as to subparagraphs 1.d. and 1.e. of the SOR.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of the evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: 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.

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Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

3. Eritrea became an independent country on May 24, 1993.

4. Applicant's SF-86 states that he became a U.S. citizen in 1986. In testimony, Applicant said he thought he became a U.S. citizen in 1987. (Tr. 50.)

5. Eritrea's citizenship requirements are matters known to the agency through its expertise in deciding security-clearance cases involving foreign influence or preference. *See* ISCR Case No. 99-0452 at 4 (App. Bd. March 21, 2000).