

DATE: July 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11499

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Esq., Department Counsel

Peregrine E. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Stan D. Brown, Esq.

SYNOPSIS

Applicant, aged 38, was born and raised in Sierra Leone. He became a naturalized U.S. citizen in 1997. Applicant's immediate family members are citizens of Sierra Leone, as is his fiancée, with whom he lives. Applicant's biological mother, who resides in Sierra Leone, has been driven from her home by terrorists. Applicant regularly sends money to his mother in Sierra Leone through informal courier channels. Applicant's ties and obligations to family members in Sierra Leone raise strong concerns regarding foreign influence and the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

On September 26, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended and modified, and Department of Defense (DoD) Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program*," (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA 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 Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn statement, dated November 1, 2002, Applicant responded to the allegations set forth in the SOR and requested a hearing. The case was initially assigned to Judge J. Burton Smith, and then to Judge Roger Willmeth, but, due to caseload considerations, was subsequently reassigned to me on March 14, 2003. A notice of hearing was issued on March 18, 2003, and I held a hearing in this matter on April 8, 2003. During the course of the hearing, the Government presented three documentary exhibits and two documents for official notice. The Applicant presented thirteen documentary exhibits and five witnesses. At the close of the hearing, with the assent of both parties, the record

was held open for one week so that Applicant could file additional documents. By facsimile dated April 14, 2003, Applicant filed two documents. The first document, consisting of one page, was identified by Applicant as "Request to Expunge Arrest Record," and was dated October 25, 2001. The second document, consisting of two pages, contained arrest information and a statement, dated ay 5, 2002, attesting that the request for expungement was approved. On April 17, 2003, Department Counsel filed a response to Applicant's expungement submission and observed that at the time he filed his SF-86, Applicant knew of the arrest and knew that he had not received a response to his request for expungement. Department Counsel questioned Applicant's candor, credibility, and fitness for a security clearance under the whole person standard. Applicant's submissions and Department Counsel's response were entered into the record of the hearing. The transcript (Tr.) was received April 16, 2003.

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted the factual allegations as set forth in sub paragraphs 1.a., 1.b., 1.c., and 1.d. involving Guideline B, Foreign Influence. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant, who is 38 years old, was born and raised in Sierra Leone. In 1985, at the age of 21 years, Applicant came to the United States to pursue a college education. When he came to the U.S. as a student, Applicant lived with an uncle, also born in Sierra Leone, who is a naturalized U.S. citizen. (Tr. 40, 60) Applicant became a naturalized U.S. citizen in 1997. Applicant is at present divorced, but plans to marry his fiancée, a citizen of Sierra Leone, who has applied for U.S. citizenship. Applicant lives with his fiancée and their daughter, who was born in 2001. (Tr. 77-78) Since finishing his education in the U.S., Applicant has been employed in a number of responsible financial management positions. These positions include working as a senior financial analyst, as assistant vice president of field operations, as a program manager for private companies, and as comptroller for a foundation specializing in international projects and grants. (Exhibit C)

Applicant's mother is nearly 70 years old, and she, Applicant's several half-sisters, and his half-brother are citizens and residents of Sierra Leone. (Tr. 30, 33, 74) None of Applicant's family members in Sierra Leone are government employees or agents. (75-77) The father and mother of Applicant's fiancée are also citizens and residents of Sierra Leone, and Applicant's fiancée testified that she speaks with her parents in Sierra Leone about once a month. (Tr. 127) Applicant's fiancée also testified that her brother and sister are citizens of Sierra Leone who reside in the United States. (Tr.128)

Applicant's mother was driven from her home in Kambia, Sierra Leone, by terrorists and forced to move to Freetown, which was considered safer than Kambia. (Tr. 65) For the past 4 or 5 years, Applicant has sent his mother approximately \$300 per year for her subsistence. (Tr.38) Applicant sends the money to his mother through an informal courier arrangement. (Tr. 72-73) Applicant stated that he tries to find business colleagues to convey the money to his mother's representatives in such venues as hotel lobbies in Sierra Leone. (Tr. 74) Applicant has requested that his mother use part of the \$300 he sends her each year to maintain a telephone so that he can call her. (Tr. 76) Applicant states that he speaks with his mother by telephone every three or four months. (Tr.73) Applicant is trying to assist his mother in leaving Sierra Leone and joining him and his fiancée in the U.S. (Tr. 69-71)

Several matters raised at the hearing created concerns regarding Applicant's candor and credibility. First, on his Security Clearance Application (SF-86), completed on October 31, 2001, Applicant admits to having traveled to Sierra Leone on his Sierra Leone passport in 1995 and 1996. In his testimony, Applicant stated that he had only traveled to Sierra Leone from the U.S. twice, once in 1996 and once again in 2002. (Tr. 82) Applicant further stated that because he was not yet a U.S. citizen in 1996, he used his Sierra Leone passport for the trip in 1996, and, as a U.S. citizen, he used his U.S. passport for the 2002 trip to Sierra Leone to attend the funeral of his uncle who had raised him. (Tr. 82).

Second, Applicant indicated in his testimony that his mother resided in Sierra Leone. At the hearing, Applicant's fiancée testified that she had met Applicant's mother in 2002 when the mother came to the U.S. to see them and their new baby. (Tr. 125) In response to further questioning, Applicant's fiancée stated that she had never met Applicant's biological mother, who lives in Sierra Leone. Applicant's fiancée identified the woman she met in 2002 was Applicant's mother

who raised him. (Tr. 128). Applicant testified that his biological mother and the woman who raised him had the same first names and surnames. (Tr. 135) He stated that the woman who raised him was his aunt and that she was a citizen of Sierra Leone residing in the United Kingdom. (Tr.137, 140)

At the hearing, Applicant admitted to being charged in 1999 with simple battery in relation to a quarrel with a former girlfriend. (Tr. 87.) He acknowledged answering "no" to Question 26 on his SF-86, which reads as follows:

Your Police Record - Other Offenses. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

Applicant stated that he did not list the simple battery charge on his SF-86 because he had requested that the matter be expunged from his record. (Tr. 89) In a document dated October 25, 2001, and filed with the Solicitor General of the county where he was charged, Applicant requested that the battery charge be expunged from his record. Applicant was notified on May 5, 2002 that his request for expungement had been approved. The approval of Applicant's request that the simple battery charge be expunged from his record did not obviate the requirement that the charge be listed in response to Question 26 on the SF-86.

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. Order No. 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. *See* Directive, Enclosure 2.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore properly concerned where available information indicates that an applicant for a security clearance may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability on the part of the applicant. These concerns include consideration

of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An evaluation of whether the applicant meets the security guidelines includes consideration

of a number of variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; (9) the likelihood for continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10864 § 2. *See* Exec. Or. 12968 § 3.1(b).

Adjudicative Guideline B, Foreign Influence (Attachment 2 to Enclosure 2) is most pertinent to this case. The security

concern identified in Guideline B is as follows:

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, 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.

The following conditions under Adjudicative Guideline B could raise security concerns and may be disqualifying:

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.

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.

E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by foreign government.

Conditions that could mitigate security concerns regarding foreign influence in the instant case include:

E2.A2.1.3.1. A determination that the immediate family member(s) (spouse, father, mother, sons, daughters, brothers, sisters) cohabitant, or associate(s) 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 person(s) involved and the United States;

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

Under the provisions of the Directive, a decision to grant or to continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. *See* Directive, 5 and 6.

It is worth noting that Applicant's allegiance, loyalty, and patriotism are not at issue in this proceeding. Section 7 of Exec. Or. 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty or patriotism.

Burden of Proof

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by an applicant's admissions or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that

he or she is nonetheless security worthy. In *Egan*, 484 U.S. at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, doubts against an applicant's security worthiness are to be resolved against the applicant.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

A review of the facts of Applicant's case under Adjudicative Guideline B, Foreign Influence, must include taking notice of the Government's Exhibit 3, U.S. Department of State Consular Information Sheet, dated February 13, 2003. The Notice states that while security in Sierra Leone has improved and the nationwide state of emergency and curfew have been lifted, the country continues to experience poverty, governmental instability, crime, business fraud, and the potential for physical harm to citizens of Sierra Leone and tourists. The Consular Information Sheet reports the suspicious death in July 2002 of a local moneychanger after a business transaction, which resulted in mob action in Freetown. The Consular Information sheet warns U.S. citizens traveling in Sierra Leone to avoid political rallies and street demonstrations, to be aware of the country's high crime rate and numerous financial scams, and to maintain a high level of security awareness at all times. While there is no evidence that the government of Sierra Leone targets U.S. citizens for economic or political espionage, the general financial and political instability of the region and its impact on the lives of Applicant's biological mother, in-laws, and extended family raise concerns about Applicant's vulnerability to pressure, coercion, exploitation or duress

Subparagraph 1.a. of the SOR under Guideline B, Foreign Influence, alleges that Applicant's immediate family members, including his biological mother and several siblings, are citizens and residents of Sierra Leone, Subparagraph 1.b. of the SOR alleges that Applicant sends his mother \$300 year. Subparagraph 1.c. of the SOR alleges that Applicant's fiancée is a citizen of Sierra Leone While Applicant originally admitted allegation 1.d. of the SOR--- traveling to Sierra Leone in 1995-- he later testified that he had traveled to Sierra Leone in 1996 and 2002.

The record shows that Applicant's biological mother and five of his half-siblings are citizens and residents of Sierra Leone. Applicant testified that for the past four or five years, he has used an informal courier network of business associates to deliver 300 American dollars a year to his biological mother in Sierra Leone for her subsistence and support. Applicant's action to provide for his mother in a chaotic and war-torn situation is laudable. However, his action to send his mother money through off-the-record channels raises the concern under disqualifying condition E2.A2.1.2.6 that this conduct could make him or his mother vulnerable to coercion, exploitation, or pressure by individuals representing a foreign government. Applicant's actions on behalf of his mother make clear that his contacts with her are not casual but intense and seriously concerned about her welfare. That he is able to contact her only infrequently does not diminish the concern that he has for her well being. Thus mitigating condition E2.A2.1.3.3 does not apply to Applicant's relationship with his mother. Similarly, mitigating condition E2.A2.1.3.3 does not apply to Applicant's fiancée's contacts with her parents in Sierra Leone.

The record also shows that during the recent civil war in Sierra Leone, terrorists forced Applicant's biological mother to flee her home in Kambia and to seek refuge in Freetown. Applicant's fiancée, with whom he lives, is also a citizen of Sierra Leone and her parents, with whom she communicates regularly, reside in Sierra Leone. These facts raise security concerns under Guideline B, subparagraph E2.A2.1.1, and the disqualifying conditions enumerated at subparagraphs E2.A2.1.2.1 and E2.A2.1.2.2. While Applicant's immediate family members are not officials or agents of the Sierra Leone government, the unstable political and economic conditions in Sierra Leone do not preclude the possibility that Applicant's family members, his fiancée, or her family members could be exploited in a manner detrimental to Applicant's loyalty to the U.S. government. Thus, mitigating factor E2.A2.1.3.1 applies only in part to the circumstances of Applicant's case.

Applicant has put forward no facts that would mitigate these security concerns 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.d. under Guideline B of the SOR are concluded against the Applicant.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of 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

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, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

DECISION

In light of all 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 the Applicant. Clearance is denied

Joan Caton Anthony

Administrative Judge