

KEYWORD: Foreign Influence; Security Violations; Personal Conduct

DIGEST: Although his family ties to Ethiopia raise a security concern, Applicant has successfully mitigated the concern because the totality of the circumstances show his family ties do not pose an unacceptable risk or concern of foreign influence. Additionally, Applicant has worked in the defense industry since 1998 and held a security clearance for eight years establishing a proven track record of trust and responsibility. Applicant also mitigated a minor security violations concern following a single incident in 2001. Clearance is granted.

CASENO: 03-24243.h1

DATE: 01/31/2006

DATE: January 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24243

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Alisa W. James, Esq.

SYNOPSIS

Although his family ties to Ethiopia raise a security concern, Applicant has successfully mitigated the concern because the totality of the circumstances show his family ties do not pose an unacceptable risk or concern of foreign influence. Additionally, Applicant has worked in the defense industry since 1998 and held a security clearance for eight years establishing a proven track record of trust and responsibility. Applicant also mitigated a minor security violations concern following a single incident in 2001. 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. On October 13, 2004, DOHA issued a Statement of Reasons (SOR) ^(U) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence), Guideline K (Security Violations), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on November 3, 2004, and elected to have a hearing before an administrative judge.

On March 9, 2005, the hearing office received the case file and it was assigned to another administrative judge on the same day. On March 10, 2005, DOHA issued a notice of hearing scheduling the case to be heard on April 5, 2005. Due to caseload considerations, the case was reassigned to me on April 1, 2005. The case was conducted as originally scheduled 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 five exhibits, which were marked as Government Exhibits (GE) 1 through 5, without objection. Applicant presented 26 exhibits, which were marked as Applicant Exhibits (AE) A through Z, without objection. DOHA received the transcript (Tr.) of the proceeding on April 19, 2005. By letter dated April 26, 2005, Applicant's counsel submitted an errata sheet correcting errors in the transcript, without objection.

FINDINGS OF FACT

Applicant is a 41-year-old senior radar engineer for a defense contractor. He was born and raised in Ethiopia. His father is a retired middle school teacher and lives in Ethiopia. His mother was a clerk for a coffee and tea company and lives in the U.S. Applicant had an aptitude for languages and he studied Russian, Italian, French, and German. Applicant's father encouraged and assisted him in learning languages. Tr. 23-24, AE B, AE C. While in high school Applicant was a member of The Bulldog Den Club, a social club sponsored by the U.S. Embassy in Addis Ababa, which offered students the opportunity to study English and to learn about the U.S. Tr. 24, AE A.

At the time Applicant graduated from high school, Ethiopia was a communist country. Options to pursue higher education were limited and administered through the Consul for Higher Education. Consequently, Applicant was allowed to pursue his education in the Soviet Union where he studied in Moscow, oldavia, and Odessa. Tr. 25. While in Odessa, he was granted permission to visit West Berlin, once there, he defected, sought and was granted asylum in Germany. Tr. 25-26. From Germany Applicant successfully enlisted the aid of a church organization in the U.S., who sponsored him to study in the U.S. Tr. 27. AE D, AE F.

Applicant immigrated to the U.S. in August 1988. GE 1. After arriving in the U.S., Applicant pursued his studies and was awarded a bachelor of science degree in biomedical engineering in June 1996, a master of science degree in electrical engineering specializing in digital signal processing in June 1998, a master of science degree in engineering in December 2002, and is currently working towards his Ph.D. part-time in electrical engineering. Tr. 54-56, AE M.

Applicant became a U.S. citizen in September 1995 and has held a U.S. passport since August 1966. Tr. 21. He was married to his first wife, an Ethiopian citizen, from October 1997 to November 2001. That marriage ended in divorce. GE 1. Applicant has remarried and has a one-year-old child with his second wife. His wife is studying nursing at a local community college. Tr. 42.

In addition to Applicant's wife and child, his immediate family consists of his mother, father, three brothers, and one sister. His mother is a resident alien living in the U.S. since May 1999. Her application for U.S. citizenship is pending. Tr. 29. Applicant's father is a citizen resident of Ethiopia. He has a pending application to become a resident alien of the U.S. Tr. 34, 48. Applicant's sister is a resident alien living in the U.S. since March 2004. She intends to apply for U.S.

citizenship when eligible. Tr. 29, 51, GE 1. Applicant has one brother, who has been a resident alien living in the U.S. since April 2005. Tr. 30-31, 33-34, 52, GE 1. Applicant's remaining two brothers are citizen residents of Ethiopia. One of the two brothers has a pending application to become a resident alien of the U.S., and the other brother intends to become a resident alien as soon as practicable. Tr. 29, 51, GE 1. None of Applicant's immediate family members living in the U.S. or those remaining in Ethiopia have ever been affiliated with the Ethiopian government.

Since September 2002, Applicant has been employed as a senior radar engineer for a defense contractor. He has held a secret security clearance since September 1998, which he acquired while working as an engineer for his previous defense contractor employer. He seeks to renew his clearance. Tr. 53.

While employed with his previous employer, Applicant was involved in a minor incident involving mishandling classified material. In July 2001, some classified material signed out to Applicant was discovered on top of a common safe located in a secure computer room. Applicant and a co-worker were working on a project and were sharing the classified material. Applicant left the secure computer room to answer a telephone call and upon his return a co-worker discovered the classified material in question on top of a safe. An informal investigation revealed there was no compromise of classified information and Applicant was informally counseled. Tr. 39-41, 47, Answer to SOR, GE 3. No further security breaches are documented in the record.

Applicant has limited contact with his immediate family members living in Ethiopia. Tr. 34-35. He has letter contact with his father approximately once a year and telephonic contact approximately four times a year, usually around holidays. GE 2. Applicant sent money to his family in Ethiopia in the amounts of \$50.00 to \$100.00 per month from 2001 to 2003 to pay for his sister's medical bills and for his brother's college tuition. He no longer sends money. Tr. 35-36, AE K, AE L. Applicant traveled to Ethiopia to visit his family in August 1997 and August 2000. Tr. 38, GE 2. Applicant does not own property in Ethiopia nor does he have any financial interests in Ethiopia. Tr. 38-39. Applicant's family members in Ethiopia are apolitical and are not subject to any persecution by any political faction. Tr. 44.

Applicant enjoys an excellent reputation at work, has a strong work ethic, and is making a significant contribution to the defense industry. His supervisors state his character is above reproach and fully endorse his being granted a security clearance. Tr. 57-77, AE T through Y. He is an avid runner and he and his wife regularly attend church. Tr. 42.

Department Counsel submitted two documents published by the U.S. State Department on Ethiopia. The first is titled "Background Note: Ethiopia," originated by the Bureau of African Affairs," January 2005. The second is titled "Ethiopia, Country Reports on Human Rights Practices - 2003, released by the Bureau of Democracy, Human Rights, and Labor, February 25, 2004. GE 4, GE 5. Applicant also submitted a document published by the U.S. State Department that is a Consular Information Sheet titled "Ethiopia," August 11, 2005. AE Z. GE 5. The evidence illustrates despite progress made in the area of human rights, there still remains room for considerable improvement. However, no evidence was offered nor was there any suggestion that links Applicant's remaining family members in Ethiopia to any form of human rights abuse.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the

national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's father and four siblings are resident citizens of Ethiopia (¶ 1.a); that Applicant has telephonic contact with his relatives in Ethiopia about four times yearly and contact by letter about once yearly (¶ 1.b); that Applicant was actively working to sponsor his two Ethiopian brothers to the U.S. (¶ 1.c.); that Applicant sent \$100.00 monthly from 1999 to January 2003 to his family in Ethiopia (¶ 1.d.); that Applicant traveled to Ethiopia in 1997 and again in 2000 to visit family members (¶ 1.e.); and that the Ethiopian government sponsored his education and selected his area of study (¶ 1.f.).

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. 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. However, some of the information alleged in the SOR under this concern has changed and is discussed below. The government amended the SOR to reflect these changes at the conclusion of the hearing. Tr. 78-81. 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). It is a mitigating condition if the immediate family members or associates 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 his family members and loyalty to the United States. MC E2.A2.1.3.1.

Security clearance decisions are not an exact science. Instead, they are predictive judgments about an Applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U.S. at 528-29. Applicant is a loyal U.S. citizen, enjoys the rights and privileges of being a U.S. citizen resident, and has established an excellent record of being a valued and trusted employee of a defense contractor. Since the SOR was issued, two of his siblings have relocated to the U.S., leaving his father and two brothers in Ethiopia. One of his brothers lives with his father and the remaining brother lives on his own. Efforts are being made for Applicant's three remaining family members living in Ethiopia to immigrate to the U.S.

It is also noteworthy Appellant has worked in the defense industry since 1998 and has held a security clearance. His employer and colleagues, who work with him on a daily basis, strongly endorse his having a security clearance. They emphasized his past and projected contributions to the defense industry. In short, Applicant has a proven track record of loyalty and trust to his employer and the United States. Applicant's connections to or contacts with Ethiopia are rather minimal or insignificant when compared with his significant connections to the U.S. Applicant's connections to or contacts with Ethiopia, as alleged in the SOR, and subsequently amended, and based on the record evidence as a whole, do not pose an unacceptable security risk or concern for foreign influence. Under the totality of circumstances, I find for Applicant.

Guideline K - Security Violations

In the SOR, DOHA alleged in July 2001 Applicant had failed to secure classified material in an authorized manner (§ 2.a.). Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information. Directive E2.A11.1.1.

The government established by substantial evidence and Applicant's admission the allegations in the SOR - Applicant failed to secure classified material in an authorized manner. The pertinent disqualifying condition under this concern is a violation due to negligence. E2.A11.1.2.2. This was an isolated incident and relatively minor in nature. In July 2001, Applicant checked out a classified document he was working on with a co-worker. When distracted to answer a telephone call, he left his secure area and while gone, the document in question was discovered on top of the safe.

Applicant does not recall whether he or his partner was reviewing the document, but since the document was signed out to him, he was responsible for it.

An informal investigation determined there was no compromise of classified information and Applicant was informally counseled. There have been no further incidents of this nature since this event occurred over four years ago. Applicant accepted responsibility for his actions and has a positive attitude about maintaining security. This act was inadvertent, was an isolated infrequent occurrence, and Applicant has a positive attitude towards the discharge of security responsibilities. Directive ¶¶ E2.A11.1.3.1., E2.A11.1.3.2., and E2.A11.1.3.4. I find for Applicant on this concern.

Guideline E-Personal Conduct

The SOR allegation under this concern repeated the identical security incident under Guideline K - Security Violations and is considered multiplicitous. The discussion above adequately addresses this incident. Therefore, no further discussion is warranted. I find for Applicant on this concern.

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

Paragraph 2. Guideline K: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: 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.

Robert J. Tuider

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.