

DATE: February 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08660

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant came to the U.S. in 1993 from Ethiopia and applied for asylum based on physical abuse received while working for the United Nations food program for Somalia. The perpetrators were persons he had discharged from the program for theft. He brought three sisters to the U.S. who are permanent residents. His mother has been accepted for admission. Another sister and her family are planning to immigrate. One brother remains in Ethiopia who is employed in a bank and not close to Applicant. Applicant was discharged by a former employer when he was late reporting after a rest break because he had fallen asleep. This was not reported on his SF 86. Applicant mitigated the allegations by showing that he is not subject to influence or pressure and that the SF 86 omission was an oversight. Clearance is granted.

STATEMENT OF THE CASE

On August 6, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated October 7, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on December 8, 2004. A Notice of Hearing was issued on December 20, 2004, and the hearing was held on January 10, 2005. The Government introduced four exhibits at the hearing and the Applicant introduced one. All were accepted into evidence. The Applicant testified on his own behalf. By agreement of the parties, the SOR Par. 1.a. was amended at the hearing to conform to the evidence presented and a new Par. 1.f. was added to clarify the evidence. The transcript was received on January 18, 2005.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign influence under Guideline B and personal conduct with explanatory information. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant is a 46-year-old employee of a defense contractor working as a security guard who came to the U.S. on a tourist visa in 1993 at age 34. He applied for asylum and it was granted. In 1995 he brought to the U.S. his three younger sisters to whom he had been a father-figure since the death of their father. The sisters also received asylum based on the status of Applicant. He became a citizen in 2001.

His mother, one brother, and one sister are still in Ethiopia. He sends \$200.00 every two or three months to his mother and talks to her once or twice a week. She is an 87-year-old housewife who has never been employed. She was approved for immigration in January 29, 2004, by the Department of State (See Attachment to Answer). The sister in Ethiopia works for an insurance company and is seeking to come to the U.S. with her husband and three children. Applicant believes she has been accepted for immigration by the Department of State. The brother in Ethiopia is the oldest sibling, works for a bank, and is not close to Applicant. Another sister has lived in Switzerland for the past seven years and is a Swiss citizen. All the other siblings are citizens of Ethiopia, but the three in the U.S. are permanent residents and will apply for citizenship. All of the siblings provide some support for the mother. An uncle and a younger brother disappeared several years ago and are believed dead. The human rights record in Ethiopia is abysmal (Exh. 4).

Applicant was a seaman in the Ethiopian navy from 1969 to 1972. His father was an accountant on the staff of His Royal Highness Haile Selassie. When that government lost power in 1974, the family's assets were confiscated and lost everything under the communist government. Applicant worked for the United Nations from 1986 to 1993 headquartered in Ethiopia. During the course of that employment he worked on the World Food Programme for Somalia and was responsible for transportation of food to Somalia during the time of the U.S. effort to restore order to that nation. He was commended by the U.N. and given a cash award for exposing a ring of thieves who worked in the program who had stolen, among other things of value, tires from the vehicles involved in the food program (Exh. A). A number of people in the program were discharged as a result of the thefts.

Unfortunately for Applicant, the actions for which he was commended by the U.N. resulted in physical action being taken against him by some of the thieves who may have been employees of the program and he was beaten and tortured. At this point he left for the U.S. from Rome where his U.N. offices were located as he was awaiting an assignment to Cambodia. After coming to the U.S. as a tourist, he was offered the assignment to Cambodia but chose to stay in the U.S. and was granted asylum after only two months.

Applicant was discharged from a job connected to computer security in 2002 when he overslept on a break. He failed to report the discharge on his SF 86 at Question 20. He admitted the facts in the answer to the SOR, says it was the result of working too long hours, and has taken corrective measures to insure that it does not happen again. He did not report it because he misunderstood the question and gave a credible explanation for the mistake and apologized for the oversight.

Applicant is enrolled in college working towards an associate arts degree and hopes to go further in his education. He is planning to be married and lives alone. His three sisters in the U.S. maintain a home together. He is proud to be an American citizen and feels he is realizing the American dream. He has a good salary. He has not returned to Ethiopia since his departure and has no intention of ever returning even for a visit.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of 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; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

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

The applicable Guidelines in the SOR concerning Foreign Influence-Guideline B provides as a Disqualifying Conditions (DC) that a security risk may exist when an individual's immediate family are not citizens of the United States or may be subject to duress. Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions that could raise a security concern and may be disqualifying include an immediate family member, or 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) Possible mitigating conditions (MC) that might be applicable are a determination that the immediate family members would not constitute an unacceptable security risk. (E2.A2.1.3.1) Such security concerns could be mitigated by 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 and the United States." (E2.A2.1.3)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has taken major steps to remove his family from Ethiopia especially his mother with whom he has close ties. The other two relatives still in Ethiopia are not involved with the government and pose no security threat. One is planning to leave with her family. The other is not close to Applicant and is employed privately. Applicant is gainfully employed in the U.S. as are his three sisters who are in the U.S. He has no use for the current government and is overjoyed to be a U.S. citizen.

He expresses himself as delighted to be a participant in the American dream and rejects totally any semblance of loyalty to his former country in view of the difficulties he and his family have encountered there. His lack of any travel to

Ethiopia since his departure twelve years ago and his adamant lack of any desire to return attests to the unlikelihood of pressure being successful. He has resisted predatory actions against him, has shown his resilience to those actions, and survived. There is no indication that he would not continue to do so. Having removed his three sisters from Ethiopia there is no indication that he would not be equally successful in doing the same with those remaining who desire to emigrate. He has sufficiently rebutted the allegations and shown that he has met the test for grant of a clearance.

Allegations regarding Personal Conduct-Guideline E raise issues of conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility. (E2.A5.1.1.)

Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination. (E2.A5.1.1.2.)

Conditions that could raise a security concern and may be disqualifying also include the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. (E2.A5.1.2.2.)

Another issue could be deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trust-worthiness determination. (E2.A5.1.2.3) Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail. (E2.A5.1.2.4.) Conditions that could mitigate security concerns include the fact that the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. (E2.A5.1.3.5.)

While the discharge from a past employment should have been reported on his SF 86, Applicant's discussion of it at the hearing and his explanation for omission rang true as sincerely expressed by one born abroad where English was not the native language and unfamiliar with the nuances of federal forms. His contrition about its omission was sincere.

In view of the Applicant's history and his concerns for his family and the benefits of U.S. citizenship, I conclude that he has mitigated the concerns expressed by the government as he had no intent to falsify and was legitimately confused by the question.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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 E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge