

DATE: March 29, 2007

In re:

SSN: -----

Applicant for Public Trust Position

ADP Case No. 05-08923

ECISION OF ADMINISTRATIVE JUDGE

EDWARD W. LOUGHRAN

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 57-year-old employee of a federal government contractor. His elderly parents live in a house Applicant owns in Liberia. Due to civil war and internal strife, the estimated value of the house is only \$1,000, a small figure compared with Applicant's U.S. assets. Applicant has mitigated the foreign influence concerns. Eligibility is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue Applicant's eligibility for an ADP I/II/III position. As required by Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on November 27, 2006, detailing the basis for its decision-concerns raised under Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on December 26, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on February 1, 2007. A notice of hearing was issued on February 8, 2007, scheduling the hearing for February 28, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue Applicant's eligibility to occupy an ADP I/II/III position. The Government offered three exhibits that were marked as Government Exhibits (GE) 1 through 3, and admitted without objection. Applicant testified but did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on March 12, 2007.

RULINGS ON PROCEDURE

Department Counsel requested administrative notice be taken of the facts contained in Hearing Exhibit (HE) VIII. The source documents for the facts are U.S. Department of State, Background Note: Liberia, dated September 2006 (HE I); U.S. Department of State, Liberia: Country Reports on Human Rights Practices - 2005, dated March 8, 2006 (HE II);

U.S. Department of State, Consular Information Sheet: Liberia, dated January 17, 2007 (HE III); U.S. Department of State, Travel Warning: Liberia, current as of January 17, 2007 (HE IV); U.S. Department of State, Notice: Continuation of the National Emergency Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia, dated July 18, 2006 (HE V); U.S. Department of State, Message to the Congress of the United States Re: Liberia, dated July 18, 2006 (HE VI); Defense Personnel Security Research Center (PERSEREC) Technical Report 02-5 dated July 2002 (HE VII). HE VII contains extracts from the report. The complete report was available through the referenced web site. Applicant did not object, and I took administrative notice of the facts contained in HE VIII.

FINDINGS OF FACT

Applicant is a 57-year-old employee of a federal government contractor. Applicant is married and has three natural children and an adopted child, all adults. ⁽¹⁾

Applicant was born in Liberia. He attended an American university. Since he graduated college, Applicant has spent many years in the United States, while occasionally returning to Liberia to live. From about 1987 to about 1990, Applicant worked as a civil servant for a Liberian government ministry. When civil war broke out, Applicant moved with his family to the United States in 1990. Applicant became a U.S. citizen in 2002. ⁽²⁾

Liberia was settled by freed slaves from the United States in 1820. In 1980, the Liberian government was overthrown by a military coup d'etat. The government retained close relations with Washington despite ethnic tensions, frequent hostilities, human rights abuses and fraud.

In 1989, Liberia was invaded by rebels from the Ivory Coast, initiating a bloody civil war that continued until 1996. Over 200,000 people were killed and a million others were displaced to neighboring countries. Civil war resumed in 1999, and continued until 2003. This second civil war left most of the country without electricity and running water, and three quarters of the population unemployed and illiterate. The presidential election in 2005 was considered generally fair and peaceful.

Notwithstanding recent democratic elections, Liberia is still considered a volatile country and its infrastructure remains basically nonexistent. The civil wars devastated the economy. Additionally, there is a high rate of crime, which is exacerbated by the very high rate of unemployment. Despite peacekeeping forces, American citizens have been targets of crime and the police are considered to be ill equipped and incapable of providing protection. The U.S. Department of State currently warns American tourists that there remains an undercurrent of political and social tension and economic hardship that could result in sporadic violence and instability. Also, Liberia continues to have a poor record with respect to human rights. Human rights abuses include ritualistic killings and deaths from mob violence, arbitrary arrests and detentions, torture, societal ethnic discrimination, trafficking in persons, and official corruption and impunity.

While the U.S. has had good relations with Liberia, and between 2004 and 2006, it poured over a billion dollars into Liberia to assist refugees and internally displaced persons, the President recently extended a July 2004 Executive Order prohibiting the importation of certain goods from Liberia. The depletion of Liberian resources, funds, and property continue to undermine Liberia's transition to a fully democratic government and an orderly society and pose a continuing and extraordinary threat to the foreign policy of the United States. There was also one espionage case involving Liberia. ⁽³⁾

In addition to the administrative notice of the specific facts contained in HE VIII, I take additional administrative notice of the following facts as related to Liberia and espionage cases. Liberia counts the United States as its strongest supporter in its democratization and reconstruction efforts. ⁽⁴⁾ The PERSEREC Technical Report lists one instance of espionage involving Liberia. While most of the countries involved in espionage were adversarial to the U.S. at the time of the espionage, neutral or friendly countries in every region of the world, from Asia to Africa, the Middle East to Central America, including some of our close allies in Western Europe, have bought or received sensitive information from American citizens. ⁽⁵⁾

Applicant owns a house in Liberia. He built the house and lived in it prior to the civil war. At one point, Applicant estimated the value of the house at \$70,000. With all the problems in Liberia, as discussed above, Applicant believes he

would not be able to sell it for \$1,000. Applicant does not have any other assets in Liberia.⁽⁶⁾

Prior to the outbreak of civil war, Applicant's parents lived in a village. During the civil war, they moved and lived in the forest. Applicant did not hear from them for several years, and presumed them dead. In late 1996 or early 1997, Applicant received news that his parents had survived the civil war. Applicant traveled to Liberia in 1998 to visit his parents. This has been Applicant's only trip to Liberia since he left in about 1990. After the civil war resumed, Applicant's parents fled to Ghana as refugees. They returned to Liberia in 2004, after the cessation of hostilities. They now live in Applicant's house in Liberia. Applicant's parents are in their 80s. They are simple farmers, and like many of their countrymen, illiterate. They have no knowledge of what Applicant does for a living.⁽⁷⁾

Applicant's wife and two of his children are naturalized U.S. citizens. Another child is a Liberian citizen, but a permanent U.S. resident, pending application for U.S. citizenship. Applicant's adopted daughter returned to Liberia some time in the 1990s. She is a Liberian citizen. She is married, and Applicant believes she is a teacher. Applicant's son is serving his second tour of duty in Iraq, as a member of the U.S. Army. He has been in the Army since 1994.⁽⁸⁾

Applicant speaks to his parents by telephone approximately two to four times per month. He speaks to his adopted daughter less often. He sends his parents around \$1,500 every year. He does not send money to his adopted daughter. Applicant is firmly entrenched and invested in America. He has assets in the United States estimated at more than \$1,000,000. He has no intention to move back to Liberia.⁽⁹⁾

Applicant presented himself as a sincere honest man at his hearing. His public trust position application shows no criminal involvement, financial, drug, or other concerns. He is well educated, with a stable employment record.⁽¹⁰⁾

POLICIES

The revised Adjudicative Guidelines are used to make ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any determination may be made.⁽¹¹⁾

An individual may not be assigned to perform sensitive duties unless a competent security authority determines it is clearly consistent with the interests of national security to do so.⁽¹²⁾ Positions designated as ADP I or ADP II are classified as sensitive positions.⁽¹³⁾ ADP III positions are "nonsensitive positions."⁽¹⁴⁾ However, DOHA has been directed by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004, to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions. Thus, even though ADP III positions are nonsensitive, they are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

"The standard that must be met for ... assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that ... assigning the person to sensitive duties is clearly consistent with the interests of national security."⁽¹⁵⁾ The government has the burden of proving controverted facts.⁽¹⁶⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him or her.⁽¹⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁹⁾ The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.⁽²⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.⁽²²⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC)

under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in AG ¶ 2(a).

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

CONCLUSIONS

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. This raises a security concern under the foreign influence guideline. Adjudication under this guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." (23) The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

I considered Foreign Influence Disqualifying Condition (FI DC) 7(a) (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*), and FI DC 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation*).

In determining the applicability of disqualifying and mitigating conditions, I specifically considered the nature of the government of Liberia, as discussed above, including human rights issues. There was one espionage case involving Liberia. Much of the danger and problems associated with Liberia is related to a high crime rate, not terrorism. I considered the circumstances of Applicant's family in Liberia. His parents are simple farmers with no idea about what Applicant does for a living. His adopted daughter is a teacher. I considered Applicant's demeanor and credibility, his character, ties to the U.S., his U.S. assets, and the impact of his son's service as a member of the U.S. Army. Because of Liberia's unstable status and one case of espionage, I find FI DC 7(a) to be minimally applicable.

The value of Applicant's house in Liberia has plummeted to the point where he does not believe he could sell it for \$1,000. When compared with his U.S. assets, I do not find this to be a substantial property interest in a foreign country. Furthermore, even if it arguably was a substantial property interest in a foreign country, based upon my consideration of all the evidence in this case, I find it could not subject Applicant to a heightened risk of foreign influence or exploitation. I do not find FI DC 7(e) to be applicable.

I have considered the Foreign Influence Mitigating Conditions (FI MC), and especially FI MC 8(a) (*the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those*

persons in that country are such that it is unlikely that the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.). When determining the applicability of FI MC 8(a), I considered everything discussed above. Applicant is a stable U.S. citizen, with family in war-torn Liberia. While Liberia clearly still has many problems, I note that none of the government publications warned of danger from terrorism. Applicant's parents are elderly farmers. His adopted daughter is a school teacher. While there was one reported case of espionage involving Liberia, Liberia is in such poor shape, that as a state, it does not possess the level of knowledge and assets that some of the more aggressive states bring to bear in the espionage arena. Applicant's vulnerability is further reduced by his parent's lack of sophistication or knowledge of Applicant's job. It is extremely unlikely that Applicant will ever be placed in a position of having to choose between the interests of his parents and adopted daughter, or the government of Liberia, and the interests of the United States. Finally, Applicant is the father of a son serving in the U.S. Army in Iraq. I find it extremely unlikely that Applicant would do anything that could bring harm to his son. I conclude FI MC 8(a) is established.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in AG ¶ 2(a). The listed factors are not the only ones that may be considered in performing a whole-person analysis in a Guideline B case. Other matters such as evidence of an applicant's personal attachments; the nature and extent of an applicant's family ties to the U.S. relative to his ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case can properly be factored into a judge's evaluation of an applicant's trustworthiness determination. ⁽²⁴⁾ I have also considered every finding of fact and conclusion discussed above, including the facts for administrative notice.

The nature of Liberia's government, its human rights record, and its relationship with the U.S. are all relevant factors in determining whether Liberia would risk damaging its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray the U.S.

Applicant has strong ties to the U.S. He has a stable work history. The value of Applicant's house in Liberia is minuscule compared to his assets in the U.S. The property could not be used effectively to influence, manipulate, or pressure him. Applicant is an intelligent mature man. He was sincere, open, and honest at the hearing. Most of his immediate family is in the U.S. I find very compelling that Applicant's son is in the U.S. Army, serving his second tour in Iraq. It is extremely unlikely Applicant would do anything to risk harm to his son. Considering all the evidence, I conclude Applicant has met his burden of demonstrating that it is clearly consistent with the national interest to grant his eligibility for an ADP I/II/III position. Accordingly, Guideline B is decided for Applicant.

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

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is granted.

Edward W. Loughran

Administrative Judge

1. Tr. at 24-25; GE 1 at 3-4.
2. Tr. at 15-16, 20, 23-24; Applicant's response to SOR; GE 1, 2.
3. HE VIII.
4. HE I at 5.
5. HE VII.
6. Tr. at 17-19, 31; Applicant's response to SOR.
7. Tr. at 16-18, 25-26, 29-30; GE 1 at 5.
8. Tr. at 21-29, 31; GE 1.
9. Tr. at 17, 26, 28, 31; GE 3.
10. Tr. at 15-16, 32; GE 1.
11. Regulation ¶ C8.2.1.
12. Regulation ¶ C2.1.2.
13. Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.
14. Regulation ¶ C3.1.2.2.
15. Regulation ¶C6.1.1.1.
16. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
17. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
18. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
19. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
20. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
21. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
22. Exec. Or. 10865 § 7.
23. ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).
24. *See, e.g.*, ISCR Case No. 04-11414 at 4 (App. Bd. Mar. 5, 2007).