

DATE: March 30, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-06455

DECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

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Department Counsel

FOR APPLICANT

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SYNOPSIS

Applicant's contacts with immediate family members who are citizens and/or residents of Ethiopia raised foreign influence concerns. Considering the totality of the circumstances of this particular case, his family ties do not pose an unacceptable risk or concern. His extensive personal and financial contacts in the United States, his track record of trust and responsibility working for defense contractors, and Ethiopia's relationship with the United States mitigate the foreign influence security concerns. Clearance is granted.

STATEMENT OF THE CASE

On May 17, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information.⁽¹⁾ On June 10, 2006, Applicant answered the SOR (Answer), and requested a hearing before an administrative judge.

The case was assigned to me on February 1, 2007. On February 27, 2007, I convened a hearing at which the government presented one exhibit, marked GE 1, to support the SOR.⁽²⁾ Applicant testified on his own behalf, and presented three witnesses and five exhibits, marked AE 1-5, which were admitted without objection. DOHA received the transcript (Tr.) on March 9, 2007.

FINDINGS OF FACT

Applicant admitted all SOR allegations with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's testimony, and the evidence, I make the following additional

findings of fact:

Applicant is a 38-year-old computer systems engineer. He has worked for his current employer, a defense contractor, since July 2006. (Tr. 24) Applicant was born in Ethiopia. He moved to the U.S. with his older brother in 1985, at age 16. (Tr. 80-82, 168) His father sent them both to the United States because he was concerned that the then communist government of Ethiopia would take them out of school and force them to serve in the Ethiopian armed forces. (Tr. 146-147) Applicant moved in with his uncle who sponsored him into the United States under a student visa. He attended high school and college in the United States, and obtained a bachelor's degree in electrical engineering in 1991.

After graduation, from approximately 1991 to 1996, he continued his practical training working for a couple of computer companies. (Tr. 82-96) In 1996, Applicant, two of his brothers, and a cousin established a computer sales company. He was a part owner in the business and worked as network engineer and sales representative. From February 2001 to December 2002, he was self-employed in his own consulting company. His business did not do well and from 2002 to 2005, he was employed by a defense contractor doing networking and computer security. While working for this company, he submitted his security clearance application.⁽³⁾ From 2005 to 2006, he worked for another defense contractor doing computer security analysis and protection. Although he did well and received certificates of appreciation and commendation for his good job performance, he was terminated because he lacked a security clearance. In 2006, he began working for his current employer, a defense contractor, performing computer security analysis. He requires access to classified information to keep his job.

Applicant has completed extensive computer security training, including certified courses by excellent companies.⁽⁴⁾ During his last three jobs with defense contractors, he received yearly training in the handling of classified information as well as contractor's proprietary information. According to his three character witnesses' testimony, Applicant has a reputation for always complying with the rules for handling classified and/or proprietary information. (Tr. 21-67) They all worked closely with Applicant and supervised him directly for approximately two years, one and one-half year, and eight months respectively. Applicant is characterized as an excellent employee, reliable, dependable, honest, and trustworthy. In their opinion, Applicant is loyal to the United States, and always took the initiative to follow the companies' security rules and procedures. There is no evidence he has ever compromised or caused the compromise of protected information.

Applicant, his wife, and all of their immediate and extended family members were born in Ethiopia, with the exception of his six-year-old son who was born in the United States.⁽⁵⁾ Applicant became a naturalized United States citizen in March 2003. He met his wife in the United States and they were married in 1998. His wife attended college in the United States and works for an airline as a ticket agent. She submitted her naturalization application in May 2006, and they expect she will be sworn in as a United States citizen in 2007.⁽⁶⁾ She last traveled to Ethiopia in 2004 and 2005 to visit with relatives and attend a cousins' weddings.

Applicant's father (68 years old) and his mother (61 years old) are permanent resident aliens of the United States. (Tr. 99-111) According to Applicant, they live in the United States approximately six months of each year and in Ethiopia the remainder of the year. His mother owns a fashion store and his father owns a computer retail store in Ethiopia. They frequently travel to the United States to purchase merchandise for their respective businesses and to visit their immediate and extended family living in the United States. Whenever they come to the United States, they stay with their sons or daughters. Applicant's mother would like to become a United States citizen. (Tr. 106)

Applicant has five siblings all of whom were born in Ethiopia. (Tr. 113-120) Three of his siblings are naturalized American citizens residing in the United States. Two of his siblings are Ethiopian citizens residing in the United States. One of them is in the process of applying for permanent residency, the other is in the United States under a student visa, but would also like to become a United States citizen.

Applicant claimed he only communicates with his mother while she is in the United States. Since approximately 18 months ago, he has had limited contact with his father because of family disagreements. He averred having little or no contact with the rest of his extended family living in Ethiopia. He only communicates with them during special circumstances such as the death of a family member. (Tr. 169)

Applicant's mother-in-law is an Ethiopian citizen living in the United States as a permanent resident alien. (Tr. 124-129) His wife has nine siblings, three brothers and six sisters. One brother and a sister are citizens and residents of Canada (occupation unknown). Two brothers (a taxi driver and an owner of a small electronics repair shop, respectively) and two sisters (one imports women's clothing the other sister's occupation is unknown) are citizens and residents of Ethiopia. Three of the sisters are permanent resident aliens in the United States. One of them has applied for American citizenship. (7)

Additionally, Applicant has approximately 30 other extended family members (uncles, aunts, cousins) residing in the United States with whom he has frequent contacts. He has a similar number of extended family members who are citizens and residents of Ethiopia with whom Applicant claimed he has infrequent to no contact. (Tr. 140)

To his, or to his wife's knowledge, none of his or his wife's immediate family members have ever been associated/involved with the Ethiopian government or its military forces. They claimed their immediate family members are apolitical and have not had any runs-ins with Ethiopian authorities. He stated that his immediate family members are financially self-sufficient and he does not provide (or receive) financial assistance to (from) any of his relatives. He only provides financial assistance (approximately \$3,000 a year) to his youngest brother who is attending college in the United States.

From 1997 to 2002, Applicant traveled between seven and ten times to Ethiopia to assist his father with setting up a computer retail store in that country. (Tr. 148-155) Around 1997, he and two of his brothers and a cousin established a computer retail store in the United States. Their company in the United States supplied his father's business with used computer parts and equipment. Additionally, he unsuccessfully tried to establish his own computer business in Ethiopia. After his business failure, Applicant became disenchanted with the bureaucracy and limited business opportunities in Ethiopia. He decided to pursue his American dream and become a United States citizen. He testified that during his trips he was never approached or questioned by Ethiopian authorities. He never had any trouble entering or leaving the country, and he was never approached by anyone seeking information concerning the United States. He last traveled to Ethiopia twice in 2002 before becoming a United States citizen, and he has no intentions to travel to Ethiopia ever again. (Tr. 161) Applicant claimed he no longer owns any interest in his brother's computer business.

Applicant said that because of his extensive security training, if he was ever approached by anyone asking for information about the United States, or if any pressure was ever placed on his family or him for such information, he would report such incident to the United States authorities. (Tr. 133) He knew as an individual he was powerless to resolve such incidents and his best course of action was to request the United States government assistance to deal with the problem.

Applicant had no financial interests or property in Ethiopia. On the other hand, he testified he has substantial financial interests in the United States that include: a residence with an estimated value of \$520,000 in which he has a \$50,000 equity; an investment real state property he owns in partnership with two of his brothers and a second cousin with an estimated value of \$1.3 million (their equity in the property is 30% of its value, of which he owns 25%); and four other residential real state properties with an estimated equity of \$220,000. He also had liquid assets totaling \$100,000. (Tr. 137-140)

Ethiopia is a developing country with a democratic federal republic form of government. (8) Since the late 1970s, the United States has provided substantial military and economic assistance to Ethiopia. The two countries have had diplomatic relations since 1992. The relations between the countries is considered good, especially in responding to regional instability, supporting the war on terrorism, and economic development. Ethiopia has devoted high-level attention to the fight against terrorism, and has a continuous counterterrorism cooperation with the United States. The country does not provide sanctuary or offer political or financial support to any terrorist group, and in recent years there have been no significant terrorist incidents directed against U.S. citizens in Ethiopia. The government's human rights record is considered poor, although improving. Members of its security forces committed serious human rights abuses, including unlawful killings, alleged political killings, torture of detainees, arbitrary arrest and searches (particularly of those suspected of sympathizing with terrorist organizations), and in general, abused individuals' civil and privacy rights.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the Disqualifying and Mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,⁽⁹⁾ and the whole person concept.⁽¹⁰⁾ Having considered the record evidence as a whole, I conclude Guideline B (Foreign Influence) is the applicable relevant adjudicative guideline.

BURDEN OF PROOF

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁽¹¹⁾ The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.⁽¹²⁾ The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the burden of persuasion.⁽¹³⁾

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.⁽¹⁴⁾

CONCLUSIONS

Under Guideline B, 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.

One of eight possible foreign influence disqualifying conditions (FI DC) could raise a security concern in this case. FI DC 1 applies where 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." Directive ¶ E2.A2.1.2.1. "Immediate family members" include a spouse, father, mother, sons, daughters, brothers, and sisters. Directive ¶ E2.A2.1.3.1. Applicant's father, mother, and brother are "immediate family members." The government produced substantial evidence to establish FI DC 1 because Applicant's parents, some of his siblings, his mother-in-law, and some of his wife's siblings are Ethiopian citizens. Some of them live in Ethiopia, others in the United States. He has close ties of affection or obligation to them.⁽¹⁵⁾

In every security clearance case an applicant's ties or connections to any foreign country require careful examination.⁽¹⁶⁾ Although, the mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁽¹⁷⁾

Applicant has close ties of affection or obligation with his parents, siblings, mother-in-law, and wife's siblings. His parents are citizens of, and reside approximately half of the year in Ethiopia. Two of his siblings, his mother-in-law, and three of his wife's siblings are citizens of Ethiopia and reside in the United States.⁽¹⁸⁾ The strength of his familial relationships is demonstrated by his travel to Ethiopia from 1997 to 2002, his wife's travel to Ethiopia in 2004-2005, and the financial support provided to his sibling as well as their business relationship. The fact that Applicant has close ties

of affection or obligation to persons who are either citizens or residents of Ethiopia is sufficient to raise security concerns concerning the possibility of Applicant's vulnerability to coercion, exploitation, or pressure by a foreign country.⁽¹⁹⁾ Because FI DCs 1 applies, Applicant has the burden to present evidence of rebuttal, extenuation or mitigation that it is clearly consistent with the national interest to grant or continue a security clearance for him.

Security concerns based on foreign influence can be mitigated by showing the applicability of one or more foreign influence mitigating conditions (FI MC). FI C 1 recognizes that security concerns are reduced when there is "[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." Directive ¶ E2.A2.1.3.1. The Appeal Board has decided that Applicant must prove that his family members, cohabitant 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 Applicant to chose between the person(s) involved and the United States.⁽²⁰⁾ Applicant satisfies the first prong of FI MC 1 because none of his or his wife's immediate family members are "agents of a foreign power" under the Appeal Board's definition.⁽²¹⁾

The second prong of FI MC 1 provides that it is potentially mitigating where the "associate(s) in question 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 the person involved and the United States." The Appeal Board interprets this language as establishing a strict standard; i.e., an applicant must affirmatively prove that there is *no possibility* that anyone might attempt to exploit or influence a foreign relative or acquaintance in the future.⁽²²⁾

In deciding whether Applicant's family members are in a position to be exploited, I considered Ethiopia's form of government.⁽²³⁾ Ethiopia and the United States have a cooperative relationship as demonstrated by their diplomatic status, the military and financial assistance/support provided by United States to Ethiopia, and Ethiopia's continued cooperation with the United States in the war against terrorism. There is no evidence the government of Ethiopia has engaged in any type of espionage against the United States. I took note of Ethiopia's poor human rights record. Although, there is little indication of targeting, or of violation of human/civil rights by the government against Ethiopian citizens who have become United States citizens, the potential still exists. To a certain extent, the security concerns raised by Ethiopia are less than those raised by a country hostile to the U.S. Nevertheless, the concerns still exist, because even friendly countries have interests that are contrary to the national interest of the U.S. Thus, FI MC 1 cannot be applied.

FI MC 3 can mitigate security concerns where "contact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. Applicant has frequent contacts when his parents visit his family in the United States. Applicant also failed to establish that his wife's contacts with her siblings in Ethiopia are casual.⁽²⁴⁾

I conclude that FI MC 3 cannot be applied. Although Applicant does not have any financial interests in Ethiopia, this fact does not mitigate the foreign influence concerns based on FI DC 1 or 3.⁽²⁵⁾ I conclude that no Guideline B Mitigating Conditions apply, and I expressly and specifically indicate that I have not relied "explicitly or implicitly" on any of the Mitigating Conditions listed under Guideline B of the Directive.⁽²⁶⁾

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. The Appeal Board has repeatedly held that a Judge may find in favor of an applicant where no specific mitigating conditions apply.⁽²⁷⁾ Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances."⁽²⁸⁾ The directive lists nine adjudicative process factors (APF) which are used for "whole person" analysis. The eighth APF, "the potential for pressure, coercion, exploitation, or duress," Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.⁽²⁹⁾ In addition to the eighth APF, other "[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."⁽³⁰⁾ Directive ¶ E2.2.1. Ultimately, the clearance decision is "an overall common sense determination." Directive ¶ E2.2.3.

In reaching my decision, I specifically considered the following facts and circumstances. Applicant arrived in the United States at a young age and completed his high school and college education in the United States. He and his siblings have embraced the "American dream," working hard to establish businesses' opportunities and investments in the United States. He appears to be doing quite well with substantial financial interest solely in the United States. Most of Applicant's immediate family members reside in the United States. His parents have freely traveled for years between the two Countries without raising the concerns or interest of the Ethiopian authorities. His immediate family members residing in Ethiopia are not agents of a foreign country, are apolitical, and have not had runs-ins with Ethiopian authorities. Their occupations are such that it is not likely they would create any attention to themselves or Applicant.

His parents, most of his siblings, his wife, and some of her siblings are permanent residents of the United States, and in the process of applying for citizenship. Applicant credibly testified his and his family's home is in the United States, and that he has no intentions of going back to Ethiopia. Applicant's past work history and reputation shows he is dependable, reliable and trustworthy. More important, he has established a reputation for being conscientious of and for follows security rules and regulations. Additionally, Ethiopia's government relations with the United States, its posture towards terrorism, its behavior toward American citizens, and the absence of a history of espionage against the United States makes it less likely that Applicant would be forced to choose between his loyalty to his family and the United States. Based on the record evidence as a whole, Applicant's immediately family members in Ethiopia do not pose an unacceptable security risk or concern for foreign influence.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I also applied the whole person concept. Considering all relevant and material facts and circumstances present in this case, I find Applicant has mitigated the foreign influence security concerns.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B) FOR APPLICANT

Subparagraphs 1.a - 1.i For Applicant

DECISION

In light of all 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.

Juan J. Rivera

Administrative Judge

1. *See*, Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.
2. The government submitted five documents, marked GE 2-6 for identification (ID), and requested I take administrative notice of facts therein concerning the government of Ethiopia. I marked the government's exhibit list as GE 7 for Identification.
3. GE 1 (Office of Personnel Management Security Clearance Application (SF 86), signed June 1, 2004).
4. AE 1 (Applicant's resume).
5. GE 1 (unless otherwise stated, his application for a security clearance is the source for the facts in this paragraph).

6. AE 2 (Applicant's wife's sworn statement, dated Feb. 22, 2007).
7. AE 2 (Applicant's wife sworn statement, dated February 22, 2007).
8. I took administrative notice of the facts in this paragraph based on information gathered from GE 2-6 for Identification.
9. Directive, Section 6.3. Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:
10. Directive, E2.2.1. ". . . The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." **The whole person concept includes the consideration of** the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the applicant; the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation; and the probability that the circumstances or conduct will continue or recur in the future.
11. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
12. ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive ¶ E3.1.32.1.
13. *Egan, supra* n.11, at 528, 531.
14. *See Id*; Directive ¶ E2.2.2.
15. The fact that his parents visit the United States for lengthy periods of time does not mitigate the foreign influence security concerns. *See ISCR Case No. 02-31154* at 6 (App. Bd. Sep. 22, 2005) (indicating low relevance if foreign relatives spend part of each year in the United States).
16. ISCR Case No. 97-0699 at 3 (App. Bd. Nov. 24, 1998) (Nothing in Guidelines B or C "requires that the foreign country in question have interests that are inimical to the interests of the United States.").
17. *See ISCR Case No. 03-02382* at 5 (App. Bd. Feb. 15, 2006); *ISCR Case No. 99-0424* (App. Bd. Feb. 8, 2001).
18. *See ISCR Case No. 03-24144* at 5 (App. Bd. Dec. 6, 2005) (As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.); *ISCR Case No. 03-04343* at 4 (App. Bd. Dec. 20, 2005) (There is a rebuttable presumption that contacts with immediate family members are not casual.).
19. ISCR Case No. 99-0511 at 10-11 (App. Bd. Dec. 19, 2000) (foreign influence issues are not limited to situations involving coercive means of influence; rather, they can include situations where an applicant may be vulnerable to non-coercive means of influence).
20. ISCR Case No. 02-14995 at 5 (App. Bd. July 26, 2004).
21. ISCR Case No. 02-21927, 2006 DOHA Lexis 229, at *15-*45 (A.J. May 17, 2006) (discussing the parameters and application of FI MC 1, especially the scope and definition of "agent of a foreign power").
22. *See ISCR Case No. 03-17620* at 4 (App. Bd. Apr. 17, 2006) ("[FI MC] 1 does not apply because, as is well settled, it requires that Applicant demonstrate that his relatives are not in a position which could force Applicant to choose

between his loyalty to them and his loyalty to the United States.").

23. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States.

24. *See* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 7, 2007). The term "casual" means a contact that is "more fortuitous in nature than planned or designed" or "resulting from, or occurring by chance."

25. *See* ISCR Case No. 04-02233 at 3 (App. Bd. May 9, 2006).

26. *See* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 7, 2007).

27. ISCR Case No. 02-30864 at 4 (App. Bd. Oct. 26, 2005); ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004).

28. ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)).

29. *See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

30. *See* ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007) and ISCR Case No. 03-02878 at 3 (App. Bd. June 7, 2006).