



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-08289

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel,  
James Duffy, Esquire, Assistant Department Counsel  
For Applicant: *Pro Se*

January 29, 2008

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant submitted his Security Clearance Application (eQIP)<sup>1</sup> on July 26, 2006. On August 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline B (Foreign Influence).<sup>2</sup>

Applicant answered the SOR on September 30, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on November 27, 2007. DOHA issued a notice of hearing on December 5, 2007, and I convened the hearing as scheduled on January 2, 2008. The government offered exhibits (GE) 1 through 4,

<sup>1</sup> Electronic Questionnaires for Investigations Processing.

<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

which were received without objection. Applicant testified on his own behalf and submitted exhibit (AE) 1, which was received without objection. DOHA received the transcript of the hearing (Tr.) on January 10, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, dated September 17, 2007, Applicant admitted all SOR allegations with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, including his demeanor and testimony, I make the following findings of fact.

Applicant is a 38-year-old software engineer. In 1992, he completed his bachelor's degree in computer science and electrical engineering. He received his master's degree in software engineering in May 2001 (Tr. 6). He married his wife in June 1999, and they have three children, ages eight, seven, and three (GE 1). His wife is a registered nurse.

Applicant and his wife are native-born U.S. citizens, and they have lived all their lives in the United States. Applicant's parents were born and raised in the Republic of Ghana (Ghana). His father immigrated to the United States in 1962. From 1970 to 1996 when he retired, Applicant's father worked as an accountant for the Ghana embassy in the United States. He became a U.S. naturalized citizen in early 1998, and passed away that same year (GE 2, Tr. 40). Applicant took his father's body to be buried in Ghana. The Ghana ambassador to the United States spoke at his father's memorial services (GE 2).

Applicant's mother immigrated to the United States in 1964. She came to the United States with her older brother (Uncle X) to help him while he was attending graduate studies at a prestigious U.S. university. She became a naturalized U.S. citizen in 1998 (GE 2). Applicant's mother worked as a beautician for most of her life. In 2001, she stopped working as a beautician to take care of Applicant's children. She moved in with Applicant in 2007 to facilitate her taking care of Applicant's children (Tr. 37-40).

In addition to his mother, Applicant has a maternal aunt living with him. His aunt is a citizen of Ghana who immigrated to the United States in 1978 (Tr. 50). She has not applied for U.S. citizenship. Applicant's aunt is currently unemployed. She worked for a child care facility until 2007. Applicant's aunt has a 38-year-old son, born in Ghana, living in the United States (Tr. 51-52). Applicant's cousin immigrated to the United States in the 1990's, and works in another state. Applicant's contact with his cousin is limited to brief telephone calls during the holidays, and he has little knowledge of his cousin's personal life (Tr. 52).

Applicant has two other cousins, who were born in Ghana to a deceased aunt (mother's sister), and that live in the United States. He believes they immigrated to the

United States in the late 1980s or early 1990s. Both are doctors in another state. He had infrequent contact with these cousins, which was limited to occasional telephone conversations, usually during the holidays. He did not know whether they are naturalized U.S. citizens. His last contact with them was the day before his hearing (Tr. 53-54).

Applicant has two siblings who were born and raised in the United States (Tr. 43). They work together in their own plumbing business. He also has a paternal half-brother who was born and raised in Ghana (Tr. 46-48). He became a naturalized U.S. citizen in 1997. He is estranged from his half-brother – they do not talk to each other, and he has little knowledge of his half-brother's personal situation.

Applicant has four maternal uncles and five cousins and their respective families that are residents and citizens of Ghana (Tr. 85). He has infrequent contact with these relatives. His mother and aunt, both of whom live with him, are the ones that maintain frequent contact with their family and friends in Ghana. Applicant sends approximately \$300 a year to support his cousin's family in Ghana (Tr. 74).

Applicant traveled to Ghana in 1998 to bury his father, and in 2000 to attend his grandmother's funeral. During both occasions, he stayed at Uncle X's home in Ghana for approximately two weeks. He also visited with his other relatives living in Ghana most of whom he met for the first time. Applicant never discusses his work with any of his relatives. When asked about what he does for a living, he only tells them he works for a prestigious U.S. university (Tr. 74).

Uncle X is an internationally renowned scientist and academician who has held important positions within the Ghana government, and is currently employed in an important government position in Ghana related to his subject matter of expertise (AE 1, GE 3, and GE 4). Applicant has personal contact with Uncle X approximately twice a year when his uncle visits the United States. He speaks to him on the telephone occasionally during the holidays and other special occasions. Uncle X visited Applicant in the United States in 2000 and 2004. The last time Applicant talked to his Uncle X was in 2004 when his Uncle called to congratulate him on the birth of his son. Applicant stated Uncle X stayed with his brother during the 2000 and 2004 visits (Tr. 81-82). Applicant's mother and aunt are the ones that maintain contact with his relatives in Ghana via telephone and letters. His contact with relatives in Ghana is occasional, and he has little knowledge of which family members and friends his mother and aunt maintain contact with or of the frequency of those contacts (Tr. 81, 89).

From 1992 to 1996, Applicant worked for several defense contractors as a software developer. During that period, he was granted access to classified information at the secret level. From 2007 to 2004, he held other jobs where he had no need for access to classified information. In 2004, he was hired by his current employer, a defense contractor, and shortly thereafter, he was granted access to classified information at the secret level. In 2006, Applicant submitted a security clearance application and requested an upgrade of his access to classified information to the top

secret level (GE 1). There is no evidence that Applicant has ever compromised classified information or that he has failed to comply with rules and regulations concerning the protection of classified information.

Applicant has had a good record working for defense contractors providing support to the military in high visibility projects. There is no evidence to dispute his contention that he is a valued employee with good work performance.

I take administrative notice of the following facts. Ghana has a democratic government with a close relationship to the United States. Its elections are generally acknowledged to be free and fair. Although there are some areas of concern, the government generally respects human rights, and continues to take significant steps to improve the protection of human rights. The U.S. and Ghanaian militaries have cooperated in numerous joint training exercises. The United States is among Ghana's principal trading partners and has provided Ghana substantial monetary development assistance.

### **Policies**

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.<sup>3</sup>

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's controlling adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."<sup>4</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on

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<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> *Egan*, *supra*, at 528, 531.

the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

Under Guideline B, the government’s concern is that foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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. 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. AG ¶ 6.

AG ¶ 7 sets out nine conditions that could raise a security concern and may be disqualifying. Three disqualifying conditions are particularly relevant to this case:

- (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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and,

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

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. However, 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.<sup>5</sup>

Applicant has an Aunt who is a citizen of Ghana living with him. She and his mother, who also lives with him, have frequent contacts and a close relationship of affection and/or obligation with many of his relatives who are citizens and residents of Ghana. Applicant has occasional contact with his Uncle X, as well as with some of his many relatives who are residents and citizens of Ghana. These contacts potentially create a risk of foreign pressure or attempted exploitation because there is the possibility that Ghanaian government agents may exploit the opportunity to obtain intelligence, classified, or economic information about the United States.

His connection to his family members in Ghana – personally and/or through his mother and aunt -- also create a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his desire to help them or the government of Ghana by providing sensitive or classified information.

The Government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Three of the four Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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 the individual will be placed in a position of having to choose between the interests of a foreign

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<sup>5</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and,

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that AG ¶¶ 8(a) and (c) partially apply, and AG ¶ 8(b) fully applies. Applicant was born, raised, and educated in the United States. His wife and children are native-born Americans. He has no financial, business, or property interests in Ghana. He has been to Ghana twice in his life, to attend his grandmother's and father's funerals. Applicant credibly testified he has only occasional contact with Uncle X, and some of his cousins and their family who are residents and citizens of Ghana. Applicant has developed a sufficient relationship and loyalty to the United States that he can be expected to resolve any conflict of interest in favor of the United States' interest.

Applicant has strong feelings of affection and a strong sense of obligation to his mother and his aunt, as shown by the fact that they live with him and care for his children. His mother and aunt have a close relationship and frequent contact with Uncle X and other relatives and friends who are citizens and residents of Ghana.

In deciding whether Applicant's family members are in a position to be exploited, I considered Ghana's form of government.<sup>6</sup> Ghana is a democratic republic with a friendly relationship with the United States. Its elections are generally acknowledged to be free and fair. The Ghanaian government generally respects human rights, and has recently taken steps to improve the protection of human rights. The U.S. and Ghanaian militaries have cooperated in joint training exercises. The United States is among Ghana's principal trading partners and has provided Ghana substantial development assistance. There is no evidence to show Ghana has an intelligence, industrial, or economic organization that engages in espionage against the United States.

Considering the totality of the circumstances, the evidence shows it is unlikely Applicant will be placed in a position of having to choose between the interests of his family and the interests of the United States. He personally has limited contact with his

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<sup>6</sup> The focus of the analysis is primarily on 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. Terrorism and crime are also factors to be considered.

relatives in Ghana. Because of Applicant's rearing in the United States, as well as that of his wife and children, I believe Applicant would resolve any possible conflict of interest in favor of the United States. I consider in my assessment the fact that his mother and aunt have contacts and close relationship with their family in Ghana. I also considered the potential exploitation or influence because of Uncle X's position in the Ghanaian government. However, considering Ghana's history, and the favorable economic and political relationship of the Ghanaian government with the United States, I believe there is little likelihood that his mother and aunt's relationship with his family and friends in Ghana could create a risk for foreign influence or exploitation.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007). In that same decision, the Appeal Board commended the whole person analysis in ISCR Case No. 03-02878 at 3 (App. Bd. June 7, 2006), which provides:

Applicant has been in the U.S for twenty years and a naturalized citizen for seven. Her husband is also a naturalized citizen, and her children are U.S. citizens by birth. Her ties to these family members are stronger than her ties to family members in Taiwan. She has significant financial interests in the U.S. , and none in Taiwan. She testified credibly that she takes her loyalty to the U.S. very seriously and would defend the interests of the U.S. Her supervisors and co-worker assess her as very loyal and trustworthy.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature, well educated native-born American citizen. From 1992 to 1996, Applicant worked for several defense



contractors and had access to classified information at the secret level. In 2004, he was hired by his current employer, another defense contractor, and has had access to classified information at the secret level since then. There is no evidence that Applicant has ever compromised classified information or that he has failed to comply with rules and regulations concerning the protection of classified information. After carefully comparing Applicant's connections to the United States and Ghana, I conclude his connections to the United States are much stronger.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his foreign preference security concerns.

### **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, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's security clearance. Eligibility for access to classified information is granted.

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JUAN J. RIVERA  
Administrative Judge