



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:	)	
	)	
XXXXXX, Xxxxxxl	)	ISCR Case No. 07-14290
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: *Pro se*

September 30, 2008

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

On 12 March 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B.<sup>1</sup> Applicant answered the SOR 24 March 2008, and requested a hearing. DOHA assigned the case to me 6 May 2008, and I convened a hearing 3 June 2008. DOHA received the transcript (Tr.) 13 June 2008.

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<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## Findings of Fact

Applicant admitted the SOR paragraph 1 allegations, except for SOR 1.f., 1.g., 1.h., 1.i., and 1.k.<sup>2</sup> He is a 44-year-old consultant employed by a defense contractor since September 2006. He seeks to regain the interim security clearance he held until the SOR was issued.

Applicant was born in Cote d'Ivoire in August 1963. He grew up and was educated there through his undergraduate degree, which he obtained in 1986. In 1986, he went to France on a scholarship that he thought would allow him to get dual master's degrees in France and the U.S. That turned out not to be the case, and in 1988 he immigrated to the U.S. with the help of his brother living here to pursue employment and education. He remained in the U.S. on a series of student and employment visas, but eventually became a legal permanent resident of the U.S. He became a U.S. citizen in June 2006, and obtained his U.S. passport in July 2006.

When Applicant was in France, he met another student, a Chinese national, and they began dating. She obtained visas to visit Applicant in the U.S. in 1991 and 1992. In September 1994, she immigrated to the U.S. as a legal permanent resident. They married later in September 1994. They have two daughters, both native-born U.S. citizens. Applicant's wife became a naturalized U.S. citizen in May 2007.

Applicant's parents, a brother, a sister, and a half-brother are resident citizens of Cote d'Ivoire. None of them has any connection to the government. Applicant is not close to his parents or his siblings, and does not have much communication with them. This was part of a cultural dynamic in which first-born sons (which Applicant was not) are favored over later-born sons. It was also part of a family dynamic in which Applicant did not learn until much later in life that some of who he thought were his brothers were, in fact, half brothers. Applicant also has three sisters and a half-brother who are dual citizens of Cote d'Ivoire and the U.S., and who reside in the U.S. One of his sisters was a broadcaster for Voice of America, who had official contacts with many governments in Africa, including that of Cote d'Ivoire.

Applicant's mother-in-law is a resident citizen of the Peoples Republic of China, who has no connection to the government. Applicant's wife has a cousin who is employed in the department of education. She and her parents were divorced when she was quite small, and she was raised by her paternal grandparents. Consequently she saw little of her parents until adulthood. She has very little contact with her mother or the cousin who works for the government. Her father died in 2006. Applicant traveled to Cote D'Ivoire in September 2000 and August 2006. He and his wife traveled to China in April-May 2001.

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<sup>2</sup>He denied this allegation on the ground that his father-in-law is dead. Accordingly, I find this allegation for Applicant.

Cote d'Ivoire is a developing African nation with a republican government. After gaining independence from France in 1960, it has recently experienced political instability and violence, characterized by a successful coup in 1999 and unsuccessful coups in 2001 and 2002. These events have contributed to economic stagnation and high unemployment, with periodic episodes of violence and civil unrest. The State Department warns potential travelers of the safety and security concerns of going to Cote d'Ivoire. Cote d'Ivoire has a poor human rights record, and the level of government corruption is high. It is not a known collector of U.S. information, nor is it known to target its expatriate citizens to obtain U.S. U.S.-Ivoirian relations have traditionally been friendly and close.

## **Policies**

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>3</sup>

## **Analysis**

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group,

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

organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>4</sup> Evaluation of an individual’s qualifications for access to protected information requires careful assessment of both the foreign entity’s willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual’s susceptibility to influence, whether negative or positive. More specifically, an individual’s contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>5</sup>

In this case, the government failed to establish a case for disqualification under Guideline B. Considering first the country involved, Cote d’Ivoire and the U.S. enjoy good foreign relations. It has not been demonstrated that Cote d’Ivoire government is actively engaged in the collection of U.S. intelligence, or that it targets its expatriate citizens such that would make Applicant or his family members likely targets for coercion, duress, or influence.

Considering Applicant’s circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant’s limited family contacts with his family members in Cote d’Ivoire. None of them have any direct connection to the government, and Applicant’s contacts with them are so limited that they do not raise a concern over protecting classified information. Further, there is even less reason to be concerned about Applicant’s family members who are resident citizens of the U.S. Finally, I did not even discuss the government of the People Republic of China because the government failed to establish that he had any meaningful contact with his in-laws in China, as his wife had very little contact with them either. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his family members in Cote d’Ivoire, or his in-laws in China. Accordingly, I resolve Guideline B for Applicant.

### **Formal Findings**

#### **Paragraph 1. Guideline B: FOR APPLICANT**

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant
Subparagraph e:	For Applicant

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<sup>4</sup>Revised Adjudicative Guidelines, ¶ 6.

<sup>5</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

Subparagraph f: For Applicant  
Subparagraph g: For Applicant  
Subparagraph h: For Applicant  
Subparagraph i: For Applicant  
Subparagraph j: For Applicant  
Subparagraph k: For Applicant  
Subparagraph l: For Applicant  
Subparagraph m: For Applicant  
Subparagraph n: For Applicant

### **Conclusion**

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 granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge