



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-14961  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Faryhn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

November 25, 2008

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**Decision**

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CURRY, Marc E., Administrative Judge:

On May 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B. 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.

Applicant answered the SOR on June 22, 2008, admitting all of the allegations and requesting a hearing. The case was assigned to me on September 4, 2008. On September 8, 2008, DOHA issued a notice of hearing scheduling the case for October 3, 2008. During the hearing, I received two government exhibits, one Applicant exhibit, and Applicant's testimony. DOHA received the transcript on October 10, 2008. Based upon a review of the record evidence, eligibility for access to classified information is granted.

## Findings of Fact

Applicant is a 41-year-old, married woman with four children, ages sixteen, fifteen, four, and one. She earned a master's degree in international business in 1995 (Tr. 15). Currently, she works for a defense contractor as a management consultant (Tr. 15). According to her supervisor, she is a "conscientious, honest, and loyal" employee (Exhibit A).

Applicant was born and raised in Senegal (Tr. 18). She emigrated to the United States in 1987 when she was 20 years old, and became a naturalized citizen in 1993 (Tr. 19). She has been married since 1991. She earned both her undergraduate and graduate degrees in the U.S.

Applicant's husband is a citizen of Cape Verde, a small country composed of approximately 10 islands located off the west coast of Africa (Tr. 92). He is an economist (Tr. 79). From 1991 through approximately 1999, he worked for the Cape Verde embassy in the U.S. as a commercial attache (Answer at 1). Before then, he worked in the Cape Verde ministry of finance (Answer at 1). His work responsibilities at these two jobs are unknown from the record.

From 1999 to 2006, Applicant's husband worked for an African foreign aid and development bank (Tr. 40). Since then, he has served as president of a Cape Verde investment agency which is part of the Cape Verdian government. His current job at the investment agency and earlier job with the development bank both focused on providing assistance to the poor (Tr. 78).

Applicant and her husband have not lived together since 1999, when he took the job with the African development bank. He visits her in the U.S. two to three times per year. They communicate by phone or e-mail approximately once per week (Ex. 2 at 14).

Applicant's husband lives in Cape Verde with his mother. He is seeking to gain a job in the U.S. in his field of expertise (Tr. 47). He wants to live in the U.S. with his family (*Id.*). He has an adult son from a prior relationship who lives in France (Tr. 50). Applicant's contacts with her husband's son are infrequent (Answer at 2).

Applicant's mother has dual Senegalese and Cape Verdian citizenship (Answer at 2). She lives in Cape Verde where she owns and manages a restaurant (Tr. 98). Applicant speaks with her approximately once per month (Tr. 56, 98). Applicant's mother last visited her in the U.S. in 1998 (Tr. 90).

In 2000, Applicant and her husband lent her mother \$30,000 (Tr. 29). She used it to purchase land in Cape Verde. Applicant has no interest in the property. Her mother has satisfied approximately \$18,000 of the loan (Tr. 32).

Applicant maintains a savings account in Cape Verde (Answer at 3). The balance is approximately \$18,000. Approximately \$17,000 consists of money her mother

reimbursed her for the loan (*Id.*). Applicant and her husband have approximately \$240,000 of savings and investments in various accounts in the U.S. (T. 21-22).

Applicant's brother is a dual U.S. and Senegalese citizen living in Senegal. He manages a restaurant his mother owns there. Applicant and her brother communicate by e-mail sporadically, and on birthdays and holidays (Tr. 98).

Applicant's sister holds dual citizenship with Cape Verde and France. She lives with her husband, a French native, in France. She is a homemaker (Tr. 60). Applicant speaks with her by phone approximately once a month. Applicant traveled to France to visit her sister once in 2004 and once in 2006 (Exhibit 2 at 12).

Applicant's mother-in-law is a citizen and resident of Cape Verde (Tr. 66). She has resident alien status with the U.S. (Tr. 95). They talk by phone once every few months (Tr. 93). Recently, in 2007, she visited Applicant in the U.S. to assist her in caring for her newborn child (Tr. 95).

Applicant's sister-in-law is a citizen and resident of Cape Verde. She is a pediatrician who works at a local hospital and at her own private clinic (Ex 2 at 11). They talk approximately once or twice per year. She has U.S. resident alien status, and periodically visits relatives in the U.S. Her last visit with Applicant in the U.S. occurred approximately 10 years ago (Tr. 95).

Applicant's brother-in-law is a citizen and resident of Cape Verde. He works at a local bank (Exhibit 2 at 11). Applicant talks with him on birthdays and holidays (Tr. 96).

Applicant's last two trips to Cape Verde occurred in 2002 (Tr. 71). She traveled to Senegal in December 1998 and December 2000 (Exhibit 2 at 12). Each trip lasted approximately one month. In 2004, Applicant visited her sister in France. Later, she visited Tunisia where her husband was then living.

### **Policies**

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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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. 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.

## **Analysis**

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

Under this guideline, “foreign contacts and interests may be a security concern if an 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 interests” (AG ¶ 6). Applicant’s family and financial ties to Cape Verde, Senegal, and France raise the issues of whether AG ¶¶ 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,” 7(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,” or 7(e), “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned business, which could subject the individual to heightened risk of foreign influence or exploitation,” apply.

Department counsel correctly noted in her closing argument that friendly countries may just as readily conduct espionage against the U.S. as hostile countries. This observation alone does not establish a foreign influence security concern. Instead, it is one of several factors including whether the country is known to target U.S. citizens, whether it is a stable democracy, and whether it is associated with a risk of terrorism. Such an assessment of the “‘geopolitical situation’ and the ‘security/intelligence profile of the country vis-a-vis the U.S.’ is crucial in Guideline B cases” (ISCR Case No 07-05686 (App. Bd., November 12, 2008 at 4).

Here, the government presented no such information about Cape Verde, France, or Senegal. Consequently, I do not conclude that Applicant’s contacts with relatives living in these countries generates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶ 7(a) does not apply.

Conversely, Applicant’s husband’s employment in Cape Verde, and her Cape Verdian bank account trigger the application of AG ¶¶ 7(b) and 7(e). Applicant’s husband is dedicated to helping the poor in Cape Verde through economic

development. Before working with the Cape Verde investment agency, he worked for an organization dedicated to the economic development of the entire African continent. Cape Verde, like any other country, may sometimes disagree with the U.S. on the means toward generating growth in the developing world; however, its ultimate goal - regional economic development - is not inimical to U.S. interests. Under these circumstances, the position and activities of Applicant's husband within the Cape Verde government "are such that it is unlikely that [she] 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." (AG ¶ 8(a)).

As for AG ¶ 7(e), Applicant's Cape Verdian bank account constitutes less than 7% of her net worth. The remainder is invested in various U.S. accounts. AG ¶ 8(f) "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual," applies.

### **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.

Applicant is a solid, respected employee within the company where she works. She has lived in the U.S. for nearly her entire adult life, receiving both her undergraduate and master's degrees here. Upon considering this case in light of the whole person concept, I conclude she has mitigated the security concern. Clearance is granted.

### **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.k:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge