



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



In the matter of:)
)
) ISCR Case No. 07-18559
)
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

September 22, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated the foreign influence security concerns arising from his dual citizenship with Ghana and the United States, and his relationship and contacts with Ghanaian citizens. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 29, 2005. On May 13, 2008, 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).¹

¹ 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 (Answer) on May 30, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on June 25, 2008. DOHA issued a notice of hearing on July 9, 2008. The hearing was convened as scheduled on August 4, 2008. The Government offered exhibits (GE) 1 through 4, which were admitted without objection.² Applicant testified on his own behalf, and presented one witness and five exhibits, marked Applicant Exhibits (AE) 1 through 5, which were received without objection.³ DOHA received the transcript of the hearing (Tr.) on August 12, 2008.

Procedural Issue

The Government elected not to pursue the allegation in SOR ¶ 1.f (Tr. 87).

Findings of Fact

Applicant admitted all the SOR allegations, with explanations, except for SOR ¶ 1.f, which he denied. His admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following additional findings of fact.

Applicant is a 36-year-old research analyst working for a defense contractor. He has never been married and has no children. He was born in Ghana to a Ghanaian father and an American mother. His 70-year-old father is a resident and citizen of Ghana. He was educated in England and the United States. While in the United States, his father married his mother. Applicant's mother is a native U.S. citizen. After he finished his education, Applicant's parents moved to Ghana. Applicant and his siblings were born and raised in Ghana. As a child, he travelled with his mother to the United States almost every year to visit his mother's family. He completed third grade, part of fourth grade, and eighth grade in U.S. schools (Tr. 74). In 1986, at age 14, Applicant's mother, and her three children moved to the United States. Applicant finished his last three years of high school in the United States.

From 1988 to 1993, he attended a U.S. university, and received a Bachelor's degree in African Studies and French. He completed his Master's degree in Economics in 1996, and received his Ph.D. in International Economics in 2004 both at U.S. universities. In 2004, Applicant was hired by his current employer, a defense contractor, as a research analyst. During the last four years, he has impressed his supervisors and colleagues with his candor, honesty, and integrity. Applicant is considered to be a valued employee and an outstanding researcher. He displays high ethical and moral standards. In his references' opinion, Applicant is a loyal American citizen who poses no risk to the interests of the United States. They recommended Applicant for a security

² GE 4 was marked for identification and considered for administrative notice only.

³ AE 11 was timely submitted post-hearing. I kept the record open to allow Applicant time to submit additional documentation. Department Counsel's memorandum, stating no objections to me considering Applicant's post-hearing submission is included in AE 11.

clearance without reservations. There is no evidence he has ever compromised classified information or that he has failed to follow the rules for handling classified information.

Applicant's father is a lawyer by profession who transitioned into Ghana's political arena (Tr. 13, Answer to the SOR). For over 21 years, he has served in high and sensitive Government positions in the Ghanaian government.⁴ During the last 15 years, Applicant's father served in Ghana's National Democratic Congress. He recently resigned his position in the National Democratic Congress and formed a new political party, in which he holds a preeminent position. Applicant's father is considered an upstanding politician and a well-respected individual. Applicant is very proud of his father and recognizes he could not fill in his shoes (Tr. 39).

Since his arrival to the United States, Applicant has travelled to Ghana four times, two times in 2007, once in 2005, and once in 1997 (Tr. 26, 42, Answer). He travelled to Ghana to visit with his father, family, and friends. Whenever he travelled to Ghana, Applicant would visit with his family for 30 to 60 days. Applicant has telephonic contact with his father at least once a month (Tr. 39). He has personal contact with him approximately once every two years when either Applicant travels to Ghana or his father travels to the United States. His father travels to the United States to visit his wife and children, and to pick up medications. Applicant has minimal contact with his father because his father is not a communicative person and is always busy with politics (Tr. 41). Applicant's father has six siblings living in Ghana, four brothers and two sisters. Applicant's contact with his extended family is infrequent - limited to personal contact when he travels to Ghana, or the occasional holiday telephone calls.

Applicant maintains contact with a Ghanaian cousin and a high school friend both of whom are residents and citizens of Ghana (Tr. 42). His cousin is an Information Technology technician working for a private company. Applicant reestablished contact with his cousin during his 2005 trip to Ghana. Upon his return to the United States, Applicant continued his contact with his cousin exchanging e-mails approximately once a month. Lately, his contact has diminished to an exchange of e-mails once or twice a year. Applicant's contact with his Ghanaian friend is limited to infrequent e-mails and telephone call.

Applicant's mother is a native U.S. citizen, raised, and educated in the United States. She met and married Applicant's father during college. After their marriage, they moved to Ghana where he worked as a teacher. In 1986, his mother, Applicant, and two siblings moved back to the United States. Applicant's father provided financial support for his family in the United States including paying for housing and college expenses (Tr. 61).

⁴ The Government positions held by Applicant's father, as well as his tenure in those positions have been withheld to protect Applicant's privacy. That information is available in GE 1, GE 2, and the transcript.

Applicant's siblings were also born in Ghana. They are dual Ghanaian and U.S. citizens by birth. Both siblings are married to U.S. citizens and they consider themselves U.S. citizens (Tr. 75). His brother served honorably in the U.S. Army for three years. He was stationed in Korea during his term of service. His permanent residence is in the United States.

Applicant considers himself to be a U.S. citizen by birthright (Tr. 36). He has no property or any financial interests in Ghana. He never registered to vote in Ghana, and has not participated in any elections in that country. There is no evidence to show that Applicant has ever exercised any of the rights and privileges reserved for Ghanaian citizens since moving to the United States. He testified he never discusses his work or any matter related to his employment, terrorism, or U.S. national security with any members of his family.

I take administrative notice of the following facts. Ghana is a constitutional democracy with a developing economy. The present government was created in 1993, and since then, there have been several peaceful, democratic transfers of governmental powers. The government of Ghana generally respects human rights and continues to make improvements in its human rights practices. The United States and Ghana enjoyed good relations maintained through educational and scientific institutions and cultural links. The U.S. and Ghanaian militaries have cooperated in numerous military exercises. The United States is among Ghana's principal trading partners. In 2007, the United States provided \$55 million in developmental assistance to Ghana. There is no evidence to show Ghana conducts economic, financial, or intelligence espionage against the United States, that it supports terrorist organizations, or that it has inimical interests to the United States.

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.⁵

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

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 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.”⁶ In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on 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

⁶ *Egan, supra*, at 528, 531.

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 two conditions that could raise a security concern and may be disqualifying in this case, including:

- (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;

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.⁷

Applicant's father's history of working for the Ghanaian government in sensitive positions, and his contribution to the forming of a new political party, raise security concerns. Applicant has frequent contacts and a close relationship of affection and/or obligation with his father. The closeness of the relationship between him and his father is shown to some extent by his personal and telephone contacts with his father; his pride and respect for his father's accomplishments; and the financial assistance provided by his father to Applicant's mother, Applicant, and his siblings. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Ghanaian agents or terrorists may exploit the opportunity to obtain information about the United States. His connection to his father's family members also creates a potential conflict of interest because his relationship is sufficiently close to raise a security concern about his desire to help his extended family by providing sensitive or classified information.

⁷ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The government produced substantial evidence raising these two 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.

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

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that Applicant's favorable information is sufficient to mitigate the Foreign Influence security concerns.

Applicant's close relationship with his father and his extended family in Ghana creates a risk of foreign pressure or attempted exploitation. However, in light of Ghana's history and current diplomatic and economic relationship with the United States, I do not believe Applicant's contact with his father, and his father's family members in Ghana, create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Available information suggests Ghana's government does not have a history of targeting American citizens to obtain U.S. information. Ghana and the United States have diplomatic and economic relations, and the United States is currently assisting Ghana with millions of dollars in economic and technical aid. Also, there is no evidence Ghana's government has ever collected or is collecting U.S. military, economic, or technical information. Under the circumstances of this case, it is unlikely that Applicant will be placed in a position of having to choose between the interests of a foreign individual or government and the U.S. interests.

AG ¶ 8(b) applies because 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' interests. He has lived in the United States for approximately 22 years, during which he finished high school, attended college, and higher education. Applicant's mother and two siblings live in the United States. All of his financial and business interests are in the United States. Applicant has established himself as a proud American citizen and a successful professional. He has worked for a U.S.

contractor for four years and has established a track record as an outstanding researcher. He displays high ethical and moral standards. Applicant is a loyal American citizen who poses no risk to the interests of the United States. His references recommended Applicant for a security clearance without reservations. There is no evidence he ever compromised classified information or that he has failed to follow the rules for handling classified information.

Applicant has had infrequent contact or communication with most of his Ghanaian relatives since he left Ghana in 1986. He has maintained some contact with a cousin and a childhood friend. Overall, I find Applicant's contact with his extended family members is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation. Considering the record evidence as a whole, AG ¶¶ 8a, (b) and (c) apply.

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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant credibly averred his loyalty to the United States, his desire to help the United States, and his desire to live only in the United States. Applicant has lived in the United States for close to 22 years. He finished high school and obtained his college and higher education degrees in the United States. Since then, he has been a productive member of the American society and worked diligently for a government contractor. Applicant has travelled to Ghana only four times since 1986 and has casual and infrequent contact with extended family members in Ghana. His mother and his two siblings (and their families) are residents and citizens of the United States. Applicant clearly has feelings of affection and or obligation towards his father. I do not believe, however, that Applicant's feelings are such that they create a heightened risk of foreign exploitation. As discussed above, Ghana's government does not have a history of targeting American citizens to obtain U.S. information, and there is no evidence

Ghana's government has ever collected or is collecting U.S. military, economic, or technical information. Ghana and the United States have diplomatic and economic relations, and the United States is currently assisting Ghana with millions of dollars in economic and technical aid. Under the totality of the circumstances, I find Applicant has no divided loyalties, and it is not likely he will be vulnerable to pressure, coercion by any foreign government.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to foreign influence.

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.f:	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's security clearance. Eligibility for access to classified information is granted.

JUAN J. RIVERA
Administrative Judge