



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



In the matter of:)
)
) ISCR Case No. 08-11000
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel

For Applicant: Patrick McGuire, Esquire

May 17, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guidelines for foreign influence and financial considerations. Accordingly, his request for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on February 28, 2007. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On July 10, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).² Applicant signed his notarized Answer to the SOR on August 25, 2009. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on December 22, 2009, and the case was assigned to me on January 4, 2010. DOHA issued a Notice of Hearing on January 21, 2010, and I convened the hearing as scheduled on February 22, 2010. During the hearing, Department Counsel offered four exhibits, which were marked and admitted as Government Exhibits (GE) 1 through 4. Applicant testified and offered 18 exhibits, which I marked and admitted as Applicant Exhibit (AE) A through R. I granted Applicant's request to hold the record open to submit additional documentation. He timely submitted two documents, admitted without objection as AE S and T. DOHA received the transcript (Tr.) on February 25, 2010.

Procedural Rulings

At the hearing, the government moved to amend the SOR as follows:

Under Guideline F, the government moved to withdraw allegations 1.g. and 1.i., which were duplicates of allegations 1.e. and 1.f., respectively.

The SOR is so amended. The original numbering of the remaining allegations is retained.

Department Counsel also requested that I take administrative notice of facts relating to Sierra Leone, set forth in a summary marked as Hearing Exhibit (HE) I, with three attached documents. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

² Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Applicant, 46 years old, is a security officer with a defense contractor. He earned a certificate in network information technology in 2002, and is currently working toward a bachelor's degree in business administration. He was born in Sierra Leone, and became a U.S. citizen in 1966. (GE 1; Answer to SOR)

Applicant married a U.S. citizen in 1994. He met his wife while she was serving in the U.S. Navy. When she was stationed in Europe, he worked for the Navy on base. Their daughter, now 15 years old, attends high school in the United States. Applicant and his wife separated in 2001 and divorced in 2003. She is no longer in the Navy, and is now a nurse practitioner. Applicant had a relationship with a woman who was born in Sierra Leone, and who is now a citizen-resident of the United Kingdom (UK). She knows that he is a security officer, but does not know that he is seeking a security clearance. They have a daughter, seven years old, who lives with her mother in the UK. Both daughters are U.S. citizens, and Applicant has daily to weekly contact with them. (GE 1; Tr. 36-37, 66-73)

The debts alleged in the SOR total approximately \$35,000 (excluding two duplicate allegations). They are primarily credit card accounts, which Applicant used to pay household and living expenses. His wife paid the family bills during their marriage, but stopped making payments as they moved toward divorce. After the divorce, Applicant responded to the debts that had accumulated by consulting with officials at his credit union. He was referred to a credit counseling service. He enrolled in the program, and made monthly payments of approximately \$200 for six to eight months in 2003-2004. However, his job contract subsequently ended, his child support payments began, and he could not afford to continue payments. (Tr. 43-44, 83-84)

The real estate market at the time had been doing well, and Applicant expected to have funds available from the sale of the family home. He planned to use those funds to pay off all of his debts simultaneously. But the real estate market began to decline. Applicant realized that the house value was decreasing and a sale was becoming more unlikely. In November 2007, he waived his rights to his interest in the home. He did not receive compensation from his ex-wife. (AE L; Tr. 40-45)

Applicant's gross monthly salary in February 2010 was \$4,000. After taxes and deductions of \$580, his net monthly income was \$3420. Applicant also pays \$175 in union dues and \$215 per month in child support, leaving a monthly net income of \$3,030. After deducting monthly expenses such as rent, loan payments, food, auto and health care expenses, Applicant has \$871 remaining each month. This amount fluctuates depending on availability of overtime hours. His savings and investments total approximately \$9,000. He does not use credit cards. For the past three years, Applicant's bills have been paid automatically from his savings account. (GE 2; AE A; Tr. 38-40, 55, 82)

Applicant approached his debts by saving his money, contacting creditors directly, and paying each debt in full or through settlement, rather than using monthly

payment plans. Applicant provided documentation showing that he has paid the debts in the SOR, as follows:

Allegation 1.a., \$8,886 – SETTLED. (GE 3, 4; AE E, R)

Allegation 1.b., \$4,785 – PAID IN FULL (GE 3, 4; AE Q)

Allegation 1.c., \$3,489 – PAID IN FULL (GE 3, 4; AE F)

Allegation 1.d., \$7,817 – SETTLED (GE 3, 4; AE O, T)

Allegation 1.e., \$4,244 – SETTLED (GE 3, 4; AE P)

Allegation 1.f., \$477 – SETTLED (GE 3, 4; AE G, N)

Allegation 1.g., withdrawn (duplicate of allegation 1.e.)

Allegation 1.h., \$514 – When Applicant began work on a new job contract, his automatic child support deductions were not transferred. After he contacted the child support agency, the error was rectified, but it took several months for the payment to be correctly deducted. The problem has been resolved and the account is up-to-date and in good standing. (GE 3, 4; AE H, S; Tr. 53-54)

Allegation 1.i., withdrawn (duplicate of allegation 1.f.)

Allegation 1.j., \$4,319 – Applicant testified that his admission to this debt in his Answer was an error. He paid it in approximately 2002, which is shown on his credit reports. (GE 3, 4; Tr. 54-55)

Applicant has two brothers (A and B) who live in Sierra Leone. Brother A works at a port, and Applicant talks with him about three to four times per year by telephone, usually on holidays. Applicant is unaware of the location of Brother B, or his occupation, although Brother A told him that Brother B might be involved in transporting people by bicycle. Brother B sometimes calls Applicant to request money. Since 2006, Applicant has sent about \$100 up to two times per year, if either brother requests it. He last saw Brother B when he traveled to Sierra Leone for his mother's funeral in 2007. He has no knowledge that either brother has connections to the government of Sierra Leone. They do not know about his job or that he is applying for a security clearance. Applicant does not own property or have other financial interests in the country. (Tr. 56-58, 74-77)

Between 2007, when his mother died, and 2009, Applicant visited Sierra Leone three times solely to perform memorial rites she had requested. Before she died, he had not been to Sierra Leone in 20 years. (Tr. 58-59, 79-80)

Applicant submitted character references from friends who have known him for 15 to 20 years. They attest to his high degree of integrity and his trustworthiness. One friend extols him as a role model to her and to others. She stated that he organized a humanitarian organization that helps local communities. Applicant's supervisor, a lieutenant in the security organization where he works, holds a security clearance. She noted that Applicant has shown a "clear understanding of security concepts" and does not hesitate to report suspicious activity. She finds him to be an honest and trustworthy person who will "go the extra mile" to accomplish tasks. An accountant and friend, who has known Applicant for 40 years, points out that Applicant supported the U.S. Navy through his employment on base, when his wife was stationed overseas. He knows of nothing in 40 years that "would make me hesitate to recommend him with full confidence" for a position of trust. (AE B, C, D, M)

Administrative Notice

I take administrative notice of the following facts.³ Sierra Leone, a republic with a multi-party system, is a developing country in western Africa. It has a history of civil war since the early 1990s. The war ended in 2002, with United Nations assistance. The country held democratic elections in 2007. Generally, the government respects its citizens' rights. However, violations of rights occur, including poor prison conditions, arbitrary arrests, restrictions on free speech and press, and discrimination and violence against women.

Sierra Leone is a member of the Economic Community of West African States (ECOWAS) and, with Liberia and Guinea, it formed the Mano River Union (MRU). Its economic policy has shifted from post-conflict stabilization to efforts to reduce poverty, fight corruption, and create jobs. It maintains cordial relations with the West, and also has diplomatic relations with China, Cuba, Iran, and Libya. It has especially strong relations with the United Kingdom, which is its largest source of foreign aid. It also receives significant foreign aid from the European Union and the United States. Sierra Leone has had a U.S. embassy since 1961. U.S. assistance focuses on "the consolidation of peace, democracy and human rights, health education, particularly combating HIV-AIDS, and human resources development."

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,

³ The facts cited derive from Hearing Exhibit 1, which includes the following three documents: *Background Note: Sierra Leone*, U.S. Department of State, June 2009; *Country-Specific Information: Sierra Leone*, U.S. Department of State, May 2009; and *Sierra Leone: Country Reports on Human Rights Practices – 2008*, U.S. Department of State, February 2009.

and consideration of the pertinent criteria and adjudication policy in the (AG).⁴ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁵ for an applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it falls to applicants to refute, extenuate or mitigate the government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.⁶ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as her 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 the government.⁷

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds.

⁴ Directive. 6.3.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence requires consideration of two relevant disqualifying conditions: AG ¶19 (a) (inability or unwillingness to satisfy debts) and AG ¶19 (c) (a history of not meeting financial obligations). Applicant's accumulation over the past several years of approximately \$35,000 in delinquencies supports application of both conditions.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.

Applicant receives credit under mitigating condition AG ¶ 20(b), which focuses on an applicant's response to factors beyond his control. Here, Applicant planned to resolve his debts with the funds from sale of his home after his divorce. However, the real estate market crashed, and the house lost value. The unexpected market decline was beyond his control. Applicant had developed a reasonable plan based on the steady increase in the value of the house at the time. AG ¶ 20(c) also applies because Applicant sought financial assistance from his credit union after his divorce. He followed the advice he received by contracting with a counseling service to resolve his debts. He made payments to that service until he was unable to afford the payments. He took these actions in 2003 and 2004, long before the security clearance process began. His most recent efforts involved saving money until he had enough to pay each debt. He then contacted creditors, and paid or settled each debt in the SOR. His finances are under control.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to foreign influence:

Foreign contacts and interests may be a security concern if the 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 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.

The relevant disqualifying condition is 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; and

Applicant has foreign family ties through his two brothers who live in Sierra Leone. He last saw his brothers in 2007 when he visited for his mother's funeral. Since then, he visited Sierra Leone two times to conduct memorial rites for his mother. He sometimes sends his brothers several hundred dollars on holidays. He is in touch with one brother a few times per year. Such ties raise questions as to whether a heightened risk of foreign influence exists. AG ¶ 7(a) applies.

The foreign influence guideline also includes factors that can mitigate security concerns. Under AG ¶ 8, the following mitigating conditions are relevant:

(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 United States;

(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;

(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.

The United States and Sierra Leone have cordial relations. The United States has maintained an embassy in Sierra Leone for more than 50 years, and provides

financial aid. The documents submitted do not indicate that Sierra Leone targets U.S. classified information.

Although Applicant has brothers in Sierra Leone, such contacts do not automatically disqualify an Applicant from obtaining a security clearance. Applicant's contact with his two brothers does not represent a risk of foreign influence. He is in touch with one brother a few times per year. He has less contact with his other brother, and does not even know where he is. Although Applicant visited Sierra Leone three times between 2007 and 2009, it was with the specific purpose of performing the memorial rites he had promised to his mother. Before 2007, he had not been to Sierra Leone in 20 years. Even though he sometimes sends money to his brother, it is unlikely that Applicant would be exploited based on these relationships.

Applicant's ties to the United States weigh in his favor when evaluating the question of potential conflicts of interest. His connections and relationships in the United States are far more important than his connections to Sierra Leone. He was educated in the United States. He was married to a U.S. service member. He supported the U.S. Navy when he worked on base while his wife served on active duty overseas. His teenaged daughter is a native-born U.S. citizen and he maintains a constant presence in her life here in the United States. He has long-standing relationships with friends and co-workers, as demonstrated by his character references. I conclude that he would choose these strong U.S. ties over his limited foreign connections, in the event that a conflict of interest arose. Mitigating conditions AG ¶ 8(a), 8(b), and 8(c) apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited

guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Foreign family ties raise security concerns because of the potential for conflicts of interest and exploitation. Here, Applicant's contacts with his brothers in Sierra Leone raise such concerns. He has traveled to Sierra Leone three times since 2007; however, his trips were solely for the limited purpose of performing memorial rites after his mother passed away, and they are concluded. Before these trips, he had not been to Sierra Leone in 20 years. He has infrequent contacts with his brothers, and sometimes provides them with financial gifts. However, Applicant's strong ties to the United States through his education, his daughter, his job, and his friends represent substantial ties to the United States. I conclude that he would resolve any conflict of interest in favor of the United States.

Applicant accrued financial delinquencies during his marriage. He attended counseling, but after several months of payments, he could not afford to continue these efforts. He planned to pay the debts when he sold his house after his divorce. However, the real estate market crashed, the house lost its value, and in 2007, he waived his rights to his interest because he believed it would be too difficult to sell. Since then, he developed his own plan to resolve the debts. He has saved money, contacted creditors, and provided documentation that he paid each of the SOR debts.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a. – 1.j.	For Applicant
Paragraph 2, Guideline	FOR APPLICANT
Subparagraph 2.a.	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 allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge