



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



In the matter of:

ISCR Case No. 09-06735

Applicant for Security Clearance

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel

For Applicant: *Pro se*

August 24, 2010

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, Applicant mitigated the foreign influence security concerns. However, he has not mitigated the security concerns raised under the guidelines for financial considerations or personal conduct. Accordingly, his request for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 12, 2009 to request a security clearance required as part of his employment with a defense contractor (Item 9). 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 finding that it is clearly consistent with the national interest to grant Applicant's request.<sup>1</sup>

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<sup>1</sup> See Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

On January 11, 2010, DOHA issued Applicant a Statement of Reasons (SOR) (Items 1, 2) that specified the basis for its decision: security concerns addressed in the Directive under Guidelines F (Financial Considerations), E (Personal Conduct), and B, (Foreign Influence) of the Adjudicative Guidelines (AG). Applicant answered the SOR on January 15, 2010 (Item 3). He failed to adequately respond. After requests from DOHA on March 2 and March 24, 2010 (Items 4, 5, 6, and 7), Applicant submitted a complete response dated March 31, 2010 (Item 8). He requested a decision without a hearing.

In his Answer to the SOR, Applicant admitted 11 of the 15 allegations under Guideline F. He also admitted the allegations listed under Guideline E and Guideline B. DOHA Department Counsel forwarded to Applicant a file of relevant materials (FORM)<sup>2</sup> dated May 7, 2010, in support of the government's preliminary decision to deny Applicant's request for a security clearance. He received the file on May 24, 2010. He was given 30 days from the date he received the FORM to file a response, but did not submit one. The case was assigned to me on August 11, 2010, for an administrative decision based on the record.

### **Procedural Ruling**

The Government requested I take administrative notice of certain facts relating to Liberia. The facts are summarized at pages 10 through 12 of the FORM, and supported by three Government reports (Items I – III). The reports provide elaboration and context for the summary. The facts administratively noticed are limited to matters of general knowledge not subject to reasonable dispute, and included in the Government reports. They are set out in the Findings of Fact.

### **Findings of Fact**

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

Applicant is 33 years old. He was born in Liberia and became a naturalized United States citizen in 2001. His parents live in Liberia. Applicant has never been married, but has been in a long-term relationship since 2003. His fiancée is a citizen of Liberia, and a permanent resident of the United States. He did not disclose his educational background on his security clearance application. Although he did not list children on his security clearance application, he did list a daughter on his interrogatory response. He listed his current position with a defense contractor as "officer," without further explanation. He listed his previous position with an electronics company, from 2000 to 2009, as "security." He held a secret security clearance in 1997. (Items 9, 10)

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<sup>2</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included 12 documents (Items 1 - 12) proffered in support of the Government's case.

In December 2008, Applicant's work hours were reduced. Subsequently, he was laid off from his job and was unemployed from February 2009 to July 2009. (Item 10) The record does not include information on his income and expenses at that time. When DOHA provided Applicant with a personal financial statement in its interrogatories of October 2009, Applicant failed to provide information on his current income, expenses, or net monthly remainder. (Item 10)

When he completed his security clearance application in June 2009, Applicant did not list any debts that were delinquent at that time. He admits that he deliberately falsified his financial responses. He did disclose that one debt had been "turned over to a collection agency." He listed a \$500 debt to a utility company, and noted that it was paid in 2005. (Items 8, 9)

The 15 SOR debts total \$17,700. They appear in Applicant's credit reports of July 2, 2009 and December 8, 2009. (Items 11, 12) One of the debts became delinquent in 2006, and most of the others became delinquent between 2007 and 2009. In his most recent response, Applicant denied four of the debts in the SOR.<sup>3</sup> The status of Applicant's debts follows.

**1.a. – Judgment for unpaid rent - \$1,200:** Applicant states this debt is paid. He provided his dispute letter to the three credit reporting agencies, but provided no documentation to show it is paid. (Item 4)

**1.b. - Debt for unpaid rent - \$7,535:** Applicant denies the debt, stating that he was a victim of identity theft. He provided his letter informing the three credit reporting agencies, but provided no documentation to support his claim of identity theft. (Item 4)

**1.c. – Debt in collections - \$1,278:** Applicant denies this debt, stating that it is a duplicate of allegation 1.b. He provided no supporting documentation. (Items 8, 10)

**1.d. – Medical debt in collections – \$40:** Applicant states this debt is paid, and that it resulted from a car accident in 2007. He gave the bill to his lawyer, and thought the lawyer paid it. He submitted a February 7, 2010 letter showing an offer to settle this debt for \$12; however, he did not provide documentation showing he paid the settlement amount. (Items 8, 10)

**1.e. – Medical debt in collections - \$424:** Applicant states this debt is paid, and that it resulted from the same car accident in 2007. He believed his lawyer paid the bill. He submitted a February 7, 2010 letter showing an offer to settle this debt for \$127; however, he did not provide documentation showing he paid the settlement amount. (Items 8, 10)

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<sup>3</sup> Applicant provided confusing responses to the SOR. In his incomplete Answer dated February 2, 2010, he failed to respond to allegation 1.e., mis-designated the allegation 1.j. response; and failed to respond to allegation 1.m. Also, he denied all but four allegations. However, when he submitted a complete response dated March 31, 2010, he admitted most of the debts he previously denied. (Items 4, 8)

**1.f. – Debt in collection - \$94:** Applicant admits the debt, but provided no information on its status. (Item 8)

**1.g. – Rental furniture debt - \$978:** Applicant admits this debt, stating that he rented furniture in 2008, but was unable to continue payments when his work hours were reduced. His March 31, 2010 Answer indicates he proposed a settlement to the creditor, but he provided no further documentation. (Items 8, 10)

**1.h. – Judgment for unpaid rent - \$1,940:** Applicant denies this debt, stating he did not live at this apartment and the debt is the result of identity theft. He provided no supporting documentation (same creditor as allegation 1.b.). (Items 4, 8)

**1.i. - Judgment for unpaid rent - \$1,200:** Applicant admits this debt, but states that it is paid. He notes in his Answer of February 2, 2010 that the plaintiff “has the obligation to file the necessary paperwork” to close the case. He did not provide documentation showing it is paid. (Items 4, 8, 12)

**1.j. – Storage company debt - \$307:** Applicant admits the debt. His Answer of March 31, 2010 indicates he proposed a settlement to the creditor, but he provided no further documentation. (Item 8)

**1.k. – Credit card debt - \$1,154:** Applicant denies this debt. In his February 2, 2010 Answer, he states that it is paid. He provided his letter informing the credit reporting agencies it is paid, but provided no evidence of payment. (Items 4, 8)

**1.l. – Debt to county government - \$72:** Applicant admits the debt, stating that it is paid. He provided no documentation to support his claim. (Item 8)

**1.m. – Debt to cable service provider - \$953:** The debt resulted from Applicant's failure to return equipment to the provider in 2007. He states he returned all equipment and the account is paid. He provided his letter informing the three credit reporting agencies that it is paid, but provided no documentation to support his claim. (Items 4, 8, 10)

**1.n. – Debt to video store - \$199:** Applicant lost or failed to return videos. He states he paid the debt in 2006, and has a current account that is in good standing. He provided no documentation to support his claim. (Items 8, 10)

**1.o. Debt to cable communications company - \$328:** The debt accrued in 2007 from charges for equipment and late payments. Applicant states he paid it in 2008, and has a current account that is up-to-date. He provided no documentation to support his claim. (Items 8, 10)

Applicant's parents live in Liberia. The record contains no evidence concerning the nature of their relationship or contacts with Applicant. He has lived with his fiancée

since 2003. She is a citizen of Liberia and a permanent resident of the United States. The record is silent as to any connections Applicant's fiancée may have to family or friends in Liberia. (Items 8, 10)

In response to DOHA interrogatories concerning foreign influence (Item 10), Applicant responded in the negative when asked questions concerning the following:

- Contacts with a foreign government, military or business;
- Family members or friends employed by a foreign government, military or business;
- Immediate family members who are citizens of a foreign country;
- Foreign financial interests;
- Foreign income or debts;
- Foreign obligations.

The record indicates Applicant has not traveled to Liberia. He disclosed a vacation to Ghana in 2006 and 2009, but states he did not have any contacts with foreign government officials. In his March 31, 2010 Answer, Applicant listed a friend who is a citizen and resident of Liberia, and identified him as his pastor. They were in touch in March 2009. In his November 9, 2009 response to interrogatories, he identified another friend who is also a citizen and resident of Liberia. There is no record evidence as to the nature of these relationships or the frequency of their contacts. (Items 8, 10)

## **Liberia**

In 1820, freed slaves from the United States settled Liberia, and declared independence in 1847. The military seized control of the government in 1980. Nine years later, Charles Taylor led rebels in an invasion, and began a civil war that ended in 1996. The war had a devastating effect on the country's people: millions were displaced, and more than 200,000 people died in the war. Taylor led the country until 2005, when Ellen Johnson-Sirleaf won the presidency. Since 2005, the country has been peaceful. Nevertheless, petty corruption is widespread. U.S. citizens have been targets of crime. According to the State Department's Human Rights report, Liberia's human rights problems include harsh prison conditions; arbitrary arrest and detention; mob violence; denial of due process; corruption at all levels of the government; restriction of the press; child abuse; violence against women; human trafficking; and racial and ethnic discrimination.

Liberia counts the United States as among its strongest supporters in its democratization efforts. President Bush visited in 2008, and Secretary of State Clinton visited in 2009. The U.S. Agency for International Development (USAID) implements the development assistance program, the second-largest program in Africa. It funds education programs, especially for girls; teacher training; health clinics and HIV/AIDS prevention; rule-of-law programs and anti-corruption programs; and support to strengthen the legislature and other political processes.

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>4</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either 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 for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to applicant to refute, extenuate or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters 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 judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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>7</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to 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

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<sup>4</sup> Directive. 6.3.

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

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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. 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 record evidence shows that Applicant's delinquencies occurred between 2006 and 2009. His four-year history of failing to meet his financial obligations supports application of the following disqualifying conditions under AG ¶19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Under AG ¶20, the following relevant conditions can potentially mitigate security concerns:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's failure to pay his debts did not occur in the distant past. Although he claimed that several debts are paid, he provided no documentation to support his claim. His debts remain delinquent. He has not shown that he is in a financial position such

that delinquencies are unlikely to recur. His unresolved financial situation casts doubt on his reliability, and AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) is relevant because Applicant states that his work hours were reduced in 2008 and he was subsequently laid off. These are circumstances that Applicant could not have predicted. However, to be applicable, this mitigating condition requires that the person act responsibly under the circumstances. Applicant provided no evidence of responsible actions during the period when his income was reduced or when he was unemployed. Only partial mitigation is available under AG ¶ 20(b).

It is unclear from the record whether Applicant has received financial counseling. He retained the services of a legal firm, which assisted him in preparing his Answers to the SOR. However, there is nothing to indicate if this company, or any other, is counseling Applicant on developing a budget, controlling spending, or avoiding future debt. Although the firm provided documents showing one settlement offer and a letter to credit reporting agencies disputing several debts, these submissions did not include documentation that Applicant had settled or paid any debts. Although Applicant informed the credit reporting agencies that he disputed five debts, he failed to document the basis of his dispute. It is not possible to conclude that his dispute is reasonable. There is no evidence of payment plans on any debts. There is no evidence that even small debts, such as the three debts of \$100 or less, have been paid. AG ¶ 20(c), (d), and (e) do not apply.

#### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition that applies under AG ¶ 16 is the following:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

When he completed his security clearance application in June 2009, Applicant listed one debt in collection, noting that he paid it in 2005. He failed to disclose his judgments, or any of his numerous debts that had been delinquent since 2006, which total almost \$18,000. Applicant's disclosure of a relatively small debt that he paid several years ago

misrepresented the true extent of his delinquent debt. Moreover, Applicant admits that he intentionally falsified answers on his security clearance application.

Under AG ¶ 17, two factors could potentially mitigate Applicant's conduct:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

The record contains no evidence that Applicant attempted to inform the government of his true financial situation before the Government discovered his financial problems through its investigative efforts. In addition, Applicant's falsification cannot be considered insignificant under AG ¶ 17(c). Revealing one debt of approximately \$500, when his past-due debts actually amount to almost \$18,000, is a significant misrepresentation that cannot be considered minor. The government relies on information provided by applicants, and deliberate falsification undermines the security clearance process. Applicant's falsification casts serious doubts on his judgment, reliability, and trustworthiness. Neither condition applies.

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

AG ¶ 6 expresses the security concern under Guideline B:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all the disqualifying conditions, and find that the following are relevant to the 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; 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 record is silent as to Applicant's contacts with his Liberian parents. He lives with his fiancée, who is a citizen of Liberia and U.S. permanent resident. Applicant has lived with her for seven years and they have a daughter. I consider them to be in a close, spouse-like relationship, and find that his fiancée is an immediate family member. Applicant also has two friends who are citizens and residents of Liberia. AG ¶ 7(a) and (d) apply.

I have also considered the mitigating conditions listed at AG ¶ 8 under Guideline B, especially the following:

(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.

The possession of close family ties with a resident or citizen of a foreign country is not, of itself, disqualifying under Guideline B. Applicant's ties consist of his parents, his fiancée, and two friends. Applicant has a spouse-like relationship with his fiancée. The record is silent as to nature or extent of his relationship with his two friends in Liberia, although the last contact with one friend was one-and-one-half years ago. He lists no other foreign family members or friends. He has no foreign property, bank accounts, or other financial interests in Liberia. Under Guideline B, the country in question must be considered. The Government reports do not indicate that Liberia is a collector of U.S. protected information. I find that the evidence does not establish that Applicant's connections to Liberian citizens present a heightened risk of exploitation, manipulation, or coercion. AG ¶ 8 (a) applies.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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's parents and two friends live in Liberia. His fiancée is a Liberian citizen and permanent U.S. resident. Liberia has become more stable in the past several years, and the record includes no indication that Liberia targets U.S. citizens for protected information. However, Applicant's financial record is problematic. He accrued significant debt since 2006. In response to the Government's concerns, he offered proof that he has contacted a legal firm, which assisted him by preparing his Answer, possibly negotiating one debt settlement, and informing the credit reporting agencies that he disputed several debts. However, although Applicant indicated that several debts have been paid and that he had obtained a settlement offer on one debt, he provided no documentation to support his claims. There is no record evidence that he paid any debts, even those under \$100, or that he established a payment plan for any debts. Moreover, rather than disclosing his 15 current delinquent debts when completing his security clearance application, Applicant listed one paid debt dating from 2005. He deliberately failed to report the true extent of his indebtedness.

A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not demonstrated the good judgment and trustworthiness required in those who protect the Government's interests. Because protection of the national interest is paramount in these determinations, such doubts about any Applicant's suitability to hold a security clearance must be resolved in favor of the Government.<sup>8</sup>

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraphs 1.a. – 1.o .	Against Applicant
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraph 2.a.:	Against Applicant
Paragraph 3, Guideline B:	FOR Applicant
Subparagraphs 3.a. – 3.b.:	For Applicant

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<sup>8</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge