



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



In the matter of:)
)
-----) ISCR Case No. 10-00586
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: Jennifer Kies Mammen, Esquire

December 22, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant was born in United States. Her mother is a U.S. citizen and her father is a Liberian citizen. Her father took her to Liberia, where she attended high school. She attended college and law school in France, and earned an LLM degree in the United States. Her father remarried, and now lives in Ethiopia. Her most recent travel outside the United States was in 2004, and that travel was on behalf of the U.S. Government. She has much greater connections to the United States than to Liberia or Ethiopia. Foreign influence concerns are mitigated. Access to classified information is granted.

Statement of the Case

On November 6, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On May 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, alleging security concerns under Guideline B (foreign influence) (Hearing Exhibit (HE) 2). The action was taken 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding

under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and it recommended referral to an administrative judge to determine whether a clearance should be granted.

On June 29, 2010, Applicant responded to the SOR. (HE 3) On August 6, 2010, Department Counsel was prepared to proceed. On August 8, 2010, the case was assigned to me. On August 25, 2010, DOHA issued a hearing notice, and the hearing was held as scheduled on October 14, 2010. (HE 1) At the hearing, Department Counsel offered two exhibits (GE 1-2) (Transcript (Tr.) 14), and Applicant offered three exhibits. (Tr. 46-47, 55, 59; AE A-C) There were no objections, and I admitted GE 1-2 and AE A-C. (Tr. 14-15, 46-47, 55, 59) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On October 22, 2010, I received the hearing transcript.

Procedural Ruling

Department Counsel and Applicant requested administrative notice of facts concerning Liberia and Ethiopia. (Tr. 9-12; Administrative Notice Requests) Department Counsel and Applicant provided supporting documents to show detail and context for these facts in the Administrative Notice request. *Id.* Department Counsel and Applicant did not object to me taking administrative notice of the facts in the documents. (Tr. 9-12) The Liberia and Ethiopia sections of the Findings of Fact of this decision, *infra*, contain the material facts from Department Counsel and Applicant's submissions on Liberia and Ethiopia.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant admitted some of the underlying facts alleged in the SOR; however, she denied that she was vulnerable to foreign influence in her response to the SOR. (HE 3) Her admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's SF-86 (GE 1) her Office of Personnel Management (OPM) personal subject interview (PSI), or her responses to DOHA interrogatories. (GE 1-2)

Applicant is a 40-year-old employee of a defense contractor. (Tr. 37, 42) Her current employer has employed her for almost one year. (Tr. 42) Applicant was born in the United States, attended some of her grammar school in the United States, high school in Ethiopia, college in France, and law school in France. (Tr. 37-38; HE 3 at 3) She earned an LLM in 1997 in the United States. (Tr. 38-40; HE 3 at 3) After she graduated from law school, she worked in a U.S. bank for five years. (Tr. 41) Then she worked for U.S. Government contractors for several years. (Tr. 41; HE 3 at Encl. 1) She is currently employed as a contracts administrator. (Tr. 43) She has never been married. (GE 1)

Applicant's connections to Liberia and Ethiopia

Applicant's father is a citizen of Liberia and resides in Ethiopia. (Tr. 65; SOR ¶ 1.a) He is 67 years old. (GE 2 at 24; HE 3 at 2) Her father works for the Liberian Government. (Tr. 65; GE 2 at 12; SOR ¶ 1.b) He hopes to retire from his Liberian Government employment late in 2010 or early in 2011. (Tr. 98)² He received a bachelor's, master's, and doctoral degrees in the United States. (Tr. 65; HE 3 at 2) After he completed his Ph.D, he worked for a state government for several years. (Tr. 66) He also worked for a private U.S. company and for the United Nations in Ethiopia. (Tr. 66-67) He worked for the United Nations for 10 to 12 years. (Tr. 89) Applicant's family lived in an African country from 1978 to 1982. (HE 3 at 3) He also worked for another international entity for seven or eight years. (Tr. 90) Applicant speaks with her father about five minutes every two or three weeks; however, sometimes she talks to him longer or communicates with him less frequently. (Tr. 68-69, 96-97; GE 2 at 24, 30) They discuss how their families are doing, and do not discuss work. (Tr. 69) He knows she works in contracts administration; however, he is not aware she is seeking a security clearance. (Tr. 69; HE 3 at 5) He travels to the United States and visits Applicant every two years or so, and he was most recently in the United States at the end of 2009. (Tr. 70) If her father ever asked her to violate security, she would not do so. (Tr. 71) She would report the request to compromise security to security personnel. (Tr. 71)

Applicant's father remarried in 1990 after Applicant had left her father's home. (Tr. 72; HE 3 at 10) Applicant's step-mother is a citizen of Liberia and resides in Ethiopia. (Tr. 72; SOR ¶ 1.c; HE 3 at 10) She works for the United Nations. (Tr. 73) Applicant is not close to her step-mother. (Tr. 72) Applicant speaks to her step-mother once or twice a year. (Tr. 73; GE 2 at 30; HE 3 at 10) She does not call to speak to her step-mother; however, sometimes her step-mother answers the telephone. (Tr. 73) She has not visited her father while he has been in Ethiopia. (GE 2 at 24) She has never served in a foreign military. (GE 2 at 25)

Applicant's two half brothers are citizens of the United States and no longer reside in Ethiopia. (Tr. 74; SOR ¶ 1.d) They now reside in the United States. (Tr. 77) They are college freshmen and live at a U.S. university. (Tr. 77-78) She has never lived

²For purposes of this decision, I will assume that the Liberian Government continues to employ Applicant's father, and that he continues to work in Ethiopia.

with her step-brothers and is not close to them. (Tr. 77-78) She speaks to her step-brothers every couple of months. (Tr. 78; GE 2 at 30) They have been in the United States for three months, and she has spoken to them twice. (Tr. 78)

Applicant's two half sisters (ages 12 and 14) are citizens of the United States and reside in Ethiopia. (Tr. 74; SOR ¶ 1.e) She has never lived with her step-sisters and is not close to them. (Tr. 75) She speaks to her step-sisters once or twice a year on the telephone. (Tr. 76; GE 2 at 30)

Applicant has an aunt and an uncle who are in their 60s. (Tr. 79-81) Her aunt is a nursing assistant. (Tr. 79) Her uncle has lived in the United States for about 20 years. (Tr. 81) They are citizens of Liberia and reside in the United States. (Tr. 79-81) (SOR ¶ 1.f) She communicates with her aunt about once every six weeks. (Tr. 80)

Applicant's aunt, uncle, half-brothers, and half-sisters do not know anything about her work and are not aware that she has applied for a security clearance. (Tr. 76, 79, 81-83) She will not tell any of her relatives if she is granted a security clearance. (Tr. 84) If any of her relatives asked for classified information, she would not provide classified information, and she would inform security of the request. (Tr. 84) She would not provide the classified information. (Tr. 84-85) Similarly, if a third party attempted to coerce her through her relatives in Ethiopia, she would not agree to the request, and would report the attempt to security. (Tr. 86)

Applicant does not have any assets in Liberia, Ethiopia, or any other country except the United States. (Tr. 60) She does not receive any financial support from her overseas family, and does not provide any money to them. (Tr. 61)

Applicant received a Liberian passport in 1987 and in 2004. (GE 2 at 3) She used her Liberian passport in 1986, 1989, 1990, and 1991 to visit several African countries. (GE 2 at 3) In 2004, when her father worked for the Liberian Government, he provided her a Liberian passport. (Tr. 50-51) She did not request it, and she never used it. (Tr. 51, 92, 95) After about six months, she returned the Liberian passport to her father, and he destroyed it. (Tr. 52, 92-95) She is not a citizen of Liberia, and has never used any benefits from Liberia. (Tr. 53) If she were a citizen of Liberia, she would renounce that citizenship. (Tr. 53) She has no loyalty to Liberia. (Tr. 54)

Applicant's connections to the United States

Applicant was born in the United States, attended some grammar school in the United States, and traveled to the United States each summer from school in France. (HE 3 at 3) Applicant has lived independently since she left her father's home to go to college. (Tr. 68) She settled in the United States after completing law school in France 1994. (HE 3 at 3) Applicant's mother is an American citizen. (Tr. 40) Her mother was born in the United States, and she lives in the United States. (Tr. 63; HE 3) Her mother earned a degree from a U.S. university and worked for a state government. (HE 3) Applicant speaks with her mother about once a week. (Tr. 63) Her mother's brother is a

Vietnam War veteran. (HE 3 at 2) Applicant provides contracts administration support to a U.S. Government contractor. (Tr. 26)

Applicant's most recent travel outside the United States was in 2004, and that travel was on behalf of the U.S. Government. (HE 3 at 4) She used her U.S. passport to travel to Liberia in 2004 on a USAID-sponsored project. (Tr. 47) The U.S. Government funded her 2004 trip to Liberia. (Tr. 48; HE 3 at 4) She has no plans to travel to Ethiopia or Liberia in the future. (Tr. 49-50) If she travels outside the United States, she plans to use her U.S. passport. (Tr. 50)

Applicant is active in her local community. She is a member of the Parent Teachers Association at her son's school. (Tr. 54) She votes in U.S. national and local elections. (Tr. 54, 57-58) She owns her home in the United States. (Tr. 54, 58) She is a member of a local church. (HE 3 at 4) She pays all of her taxes. (HE 3 at 4) She also has a retirement account and financial accounts in the United States. (Tr. 58)

Applicant's son, who is ten years old, was born in the United States. (Tr. 61-62; HE 3 at 4) Applicant's son lives with her. (Tr. 62)

Character Evidence

Applicant's manager at her current employment has known her for more than a year and describes her as trustworthy and ethical. (HE 2 at Encl. 2) She demonstrates integrity and provides consistently high quality work. *Id.* She recommends approval of Applicant's security clearance. *Id.*

A witness with a master's degree in acquisition and contracts management, who has worked for U.S. Government contractors for 26 years, has known Applicant for one year. (Tr. 21-25) She lauded Applicant's honesty, professionalism, conscientious compliance with rules and procedures, diligence, reliability, contributions to mission accomplishment, and trustworthiness. (Tr. 26-35) She is close to her son, and she is a loyal, patriotic American. (Tr. 31-34)

Ethiopia

Ethiopia has had a positive relationship with the United States since 1903. Ethiopia has a population of 80 million people and is located in the Horn of Africa. Ethiopia is a free republic with a developing economy based on agriculture. Ethiopia has begun economic reform and privatization of state enterprises.

While Ethiopia is generally stable, domestic insurgent groups and extremists from Somalia provide security risks, especially in the Afar regions of Ethiopia. Human rights abuses occur in Ethiopia, such as unlawful killings, torture, beatings, mistreatment of detainees, arbitrary arrest and detention, administrative and judicial corruption, illegal searches, use of excessive force by security services, and restrictions on freedom of the press, assembly and association.

Ethiopia and the United States signed a mutual defense agreement in 1953. The U.S. Government provided nearly \$5 billion in aid to Ethiopia between 1999 and 2009. The United States considers Ethiopia an important partner in the region, and Ethiopia has supported American counter-terrorism efforts.

The Office of National Counterintelligence Executive did not include Ethiopia in the Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, and Ethiopia is not included on the Department of State's list of state sponsors of terrorism.

Liberia

Liberia has had a close and friendly relationship with the United States from its founding by Americans returning to Africa after their emancipation from slavery. In 1847, Liberia declared independence. In 1980, Samuel K. Doe seized power in a military coup d'état. Doe maintained good relations with the United States despite ethnic tensions and corruption. In 1989, Charles Taylor initiated a civil war that lasted until 1996. During the civil war, over 200,000 people were killed and one million others were displaced to neighboring countries. From 1997 until 2003, Charles Taylor ran Liberia, and poverty, unemployment, and illiteracy increased. After a transitional government, and the "most free, fair, and peaceful elections in Liberia's history," Ellen Johnson-Sirleaf was elected president in 2005. Department of State, Bureau of African Affairs, *Background Note: Liberia* (June 1, 2010) at 4. President Sirleaf was educated at Harvard University. Secretary of State Rice and First Lady Laura Bush attended her inauguration. Since her election, the political situation has been stable. The Liberian Government has taken action to spur economic recovery and taken a public stance against corruption.

Despite political advances since 2005, Liberia has a high crime rate, and very high unemployment. Police are ill-equipped and often ineffective. Petty corruption is widespread. Prison conditions are harsh. Arrests and detentions are arbitrary. The Liberian Government restricts the press. Child and spousal abuse, rape, human trafficking, child labor, and abuses are somewhat common. Security officials occasionally harass journalists.

The United States is a strong supporter of Liberia's reconstruction efforts and continued democratization. Since 2006, the United States has given more than \$1 billion in bilateral aid to Liberia, and the United States leads efforts to reconstitute Liberia's armed forces. President George Bush and later Secretary of State Clinton have met with President Sirleaf to discuss issues of mutual interest.

The Office of National Counterintelligence Executive did not include Liberia in the Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, and Liberia is not included on the Department of State's list of state sponsors of terrorism.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b). The DOHA Appeal Board may reverse the administrative judge’s “decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law.” ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (citing Directive ¶¶ E3.1.32.3 and E3.1.33.3).³ The federal courts generally limit appeals to whether or not the agency complied with its own regulations.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline B (foreign influence) with respect to the allegations set forth in the SOR.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 indicates two conditions that could raise a security concern and may be disqualifying in this 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

³See ISCR Case No. 09-03773 at 7 n. 4-6 (A.J. Jan. 29, 2010)(discussing appellate standards of review).

foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(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.

Applicant's communications with her family members living in Liberia and Ethiopia, except for her father, are not frequent. She is not close to her step-mother, her step-brothers, cousins, aunts, uncles, and step-sisters living in Ethiopia or Liberia. However, she is close to her father and frequently communicates with him. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant's relationship with her father is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Her relationship with her father creates a concern about Applicant's "obligation to protect sensitive information or technology" and her desire to help her father who is in Ethiopia. For example, if criminals in Ethiopia, or the Liberian Government wanted to expose Applicant to coercion, it could exert pressure on her father. Applicant would then be subject to potential, indirect coercion through her father's relationship with her.

The mere possession of close family ties with a family member living in Ethiopia or Liberia is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of Liberia and Ethiopia with the United States places a moderate burden of persuasion on Applicant to demonstrate that her direct relationship with her father does not pose a security risk. Applicant should not be placed in a position where she might be forced to choose between loyalty to the United States and a desire to assist her father, who might be coerced through his relationship to Liberia or Ethiopia.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to

those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from Ethiopia or Liberia seek or have sought classified or economic information from or through Applicant, her father, or any other relatives, it is not possible to absolutely rule out such a possibility in the future. Applicant’s communications with her father are frequent, and she evidently continues to feel an obligation and an emotional tie to him. Applicant’s concern for the welfare of her father is a positive character trait that increases her trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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.;
- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(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.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant received a Liberian passport in 1987 and in 2004. She used her Liberian passport in 1986, 1989, 1990, and 1991 to visit several African countries. Applicant has frequent contact with her father, and her father has Liberian Government employment. The amount of contacts between an Applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced through their relatives. Because of her connections to her father, Applicant is not able to fully meet her burden of showing there is “little likelihood that [her relationship with her father who is living in Ethiopia and is a citizen of Liberia] could create a risk for foreign influence or exploitation.” She has emotional ties to her father.

AG ¶ 8(b) fully applies. Applicant has “deep and longstanding relationships and loyalties in the U.S.” She has strong family connections to the United States. Applicant, her mother, and her son were all born in the United States and live in the United States. She is active in her local community, a member of the Parent Teachers Association at her son’s school, and a member of a local church. She has a U.S. passport and votes in U.S. national and local elections. She owns her home in the United States. She pays all of her taxes. She also has a retirement account and financial accounts in the United States.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by her relationships with her family members who either live in Ethiopia or Liberia. There is no evidence that terrorists, criminals, the Ethiopian or Liberian Governments, or those conducting espionage have approached or threatened Applicant or her relatives to coerce Applicant or her relatives for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant’s family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States’ recent relationships with Liberia and Ethiopia, and especially the human rights violations and crime in those countries.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant’s involvement with her father or other relatives living in Ethiopia or Liberia. Applicant is not required to report her contacts with her family members living in Ethiopia or Liberia.

AG ¶ 8(f) has limited applicability. Applicant has substantial property interests in the United States, which include her employment in the United States, and the value of her home and investments in the United States. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised

in this case. Applicant does not own any property or have any investments in Liberia or Ethiopia.

In sum, the primary security concern is Applicant's close relationship with her father, and to a much lesser extent, her relationships with other relatives living in Liberia and Ethiopia. Her family members living outside the United States are readily available for coercion. The Liberian Government employs her father, which increases security concerns. The violations of human rights and crime increase the risk of coercion. Multiple factors tend to mitigate concerns. Her father lived in the United States for many years and was employed by the United Nations. The absence of any history of Liberia and Ethiopia's espionage (especially industrial espionage) against the United States decrease the risk of coercion. Applicant's significant connections to the United States clearly outweigh her connections to Liberia and Ethiopia and are sufficient to mitigate security concerns. Guideline B concerns are mitigated by AG ¶ 8(b); however, assuming AG ¶ 8(b) is not applicable, security concerns are separately mitigated under the whole-person concept, *infra*.

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 relevant 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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

The circumstances tending to support denial of Applicant's clearance are not sufficient to disapprove her access to classified information. Applicant's father and several other relatives are citizens of Liberia and live in Ethiopia. Her father is an employee of the Liberian Government. Applicant has frequent contact with her father, and has ties of affection to him. She attended high school in Liberia. Applicant received Liberian passports in 1987 and in 2004. She used her Liberian passport in 1986, 1989, 1990, and 1991 to visit several African countries.

There are other facts which warrant mitigation of security concerns. Applicant was born in the United States, and has no intention of living in any other country. Two witnesses lauded her reliability, trustworthiness, and loyalty. She attended grammar school in the United States and earned an LLM degree in the United States. She is 40 years old and has lived approximately half of her lifetime in the United States. Her mother and 10-year-old son are U.S. citizens and live in the United States. She is active in her community, votes in U.S. elections, and pays U.S. taxes. She owns a home in the United States, and her employment is in the United States. She has a U.S. passport. In 2004, when her father worked for the Liberian Government, he provided her a Liberian passport. She did not request the 2004 Liberian passport, and she never used it. After about six months, she returned the 2004 Liberian passport to her father, and he destroyed it. She is not a citizen of Liberia, and after leaving Liberia to attend college in France, has never used any other benefits from Liberia. If she were a citizen of Liberia, she would renounce that citizenship. She has no loyalty to Liberia, and the SOR did not allege a concern relating to foreign preference.

A Guideline B decision concerning Liberia and Ethiopia must take into consideration the geopolitical situation in those two countries, as well as the dangers existing in Liberia and Ethiopia.⁴ The danger of coercion from the Liberian and Ethiopian Governments is less likely than in many other countries. These two countries do not compete with the United States militarily, diplomatically, and through trade. Liberia and Ethiopia do not have a history of espionage targeting U.S. military and industrial secrets. Liberia and Ethiopia have received billions of dollars of U.S. assistance over the last five years, and they cooperate with the United States efforts to counter terrorism.

There is no derogatory information concerning Applicant's police or financial records. She has never been fired from a job. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. She is loyal to the United States. She considers the United States to be her home. Applicant's demeanor, sincerity, and honesty at her hearing are important factors militating towards approval of her access to classified information.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude she has mitigated the foreign influence security concern.

⁴ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

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 to 1.f: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge