



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



In the matter of:)	
)	
)	ISCR Case No. 10-03743
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: William T. O'Neil, Esquire, Department Counsel
For Applicant: *Pro se*

April 12, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On October 28, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and F for Applicant. (Item 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing with an undated response, and he requested that his case be decided on the written record in lieu of a hearing. (Item 4.) On December 3, 2010, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered nine documentary exhibits. (Items 1-9.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on January 14, 2011. Applicant submitted no additional evidence. The case was assigned to this Administrative Judge

on February 3, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel requested in the FORM that I take administrative notice of certain facts relating to the countries of Ghana and Russia. The attached documents were admitted into evidence as Exhibits I through III on Ghana and Exhibits I through IX on Russia. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR, Applicant admitted all of the SOR allegations 1.a. through 1.d., under Guideline B, and he denied allegations 2.a. through 2.d, under Guideline F. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 38 years old. He served in the United States Army from May 1997 to July 2002, and received an Honorable Discharge. He received a Ph.D. that was funded through the GI Bill. (Item 4.) He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Applicant was born in Ghana in 1971, and became a naturalized United States citizen on July 11, 2000. From then until July 2003, Applicant held dual citizenship with Ghana and the United States. Applicant's mother, his two sisters, and his two daughters are United States citizens and residents. (Item 5.)

Guideline B, Foreign Influence

The SOR lists four allegations, (1.a. through 1.d.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. As stated above, Applicant has admitted all of the allegations listed in his RSOR:

1.a. Applicant's father is a citizen and resident of Ghana. Applicant wrote in his ROSR (Item 4), "My father is a 75 years (*sic*) old man who has been retired for several years now. He has no ties to the government of Ghana and he is not involved in any government or organizational entities. . . . While I call my father on a casual and infrequent basis, it is only to check on his well being."

In Applicant's Personal Subject Interview, it is written that Applicant's contact with his father is close, and he has contact with his father two or three times a month. His father does not know Applicant is applying for a security clearance, and his father has

never asked Applicant to provide to him classified, sensitive or proprietary information. (Item 7.)

1.b. Applicant's uncle is a citizen and resident of Ghana, and is the Director of Governors. Applicant wrote, "My uncle is no longer working in the capacity as the director of Governments. He is now a private consultant for a private company that works on rural developments. I do not know much and I communicate with him on a very limited basis (maybe two times a year). He does not know what I do for a living and has no influence what so ever [sic] on my life." (Item 4.)

1.c. Applicant's mother-in-law is a citizen and resident of Russia. Applicant wrote, "My mother-in-law is almost 80 years old, retired and speaks only Russian. I do not speak Russian and DO NOT communicate with her. She absolutely does not know what I do for a living and has no influence what so ever [sic] on my life. My wife communicates with her on a casual basis only to check on her well being and does not plan on visiting Russia." (Item 4.)

1.d. Applicant's brother-in-law is a citizen and resident of Russia. Applicant wrote, "My wife communicates with her brother on a very limited casual basis only to check on his well being. My wife does not discuss with him what I do nor is he interested in what I do. . . . I do not communicate with him as I do not speak Russian and he absolutely does not have any influence on my life." (Item 4.)

A review of Applicant's Personal Subject Interview (Item 7) revealed that, while Applicant kept his passport from Ghana until 2003, he never used it after he entered the United States in 1992, and the passport expired in November 2002, when Applicant mailed it back to his father to return to the Ghana embassy. Applicant has never accepted any rights or benefits from Ghana after he became a United States citizen; he has never voted in an election in Ghana or held any political office in Ghana; he never served in the Ghana military; nor has he performed any other service for Ghana.

Guideline F, Financial Considerations

The SOR lists four allegations (2.a. through 2.d.) regarding financial difficulties under Adjudicative Guideline F. As stated above, Applicant denied all of the allegations under Guideline F in his RSOR. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$16,899 for a mortgage that is more than 120 days overdue.

1.b. This overdue debt is cited in the SOR in the amount of \$55,948 for a mortgage that is more than 120 days overdue.

1.c. This overdue debt is cited in the SOR in the amount of \$129,000 on an account that has been charged off.

1.d. This overdue debt is cited in the SOR in the amount of \$71,898 on an account that has been placed in collection.

Applicant wrote in his RSOR that these four debts should not be reported on his credit report. They are from the mortgages for four homes that were foreclosed and then sold or auctioned, which, Applicant contended, resolved the overdue debt. He averred that he wrote to the four creditors, but he has received no reply.

A review of Applicant's Personal Subject Interview also revealed that at one point in time Applicant owned seven investment rental properties. Eventually they all were entered into foreclosure due to his inability to make the required mortgage payments.

Current Status of Ghana

I take administrative notice of the following facts regarding Ghana: Ghana is a developing country on the west coast of Africa. Its population of 24 million people are comprised of ethnically diverse groups with more than 50 languages and dialects. Ghana became independent from the United Kingdom in 1957 and has developed a democratic Government following a history of coups, military regimes, and dictatorial Governments. The present Government was created under a 1993 constitution, which consists of a presidency and parliament. Presidential and parliamentary elections held in 2008 were generally peaceful and transparent.

While the Government of Ghana generally respects human rights and has made improvements, the country continues to experience problems in several areas of human rights practices: including excessive use of force by the police, harsh and life-threatening prison conditions, and some physical and verbal harassment to journalists.

Current Status of Russia

I take administrative notice of the following facts regarding Russia: Russia is a federation comprised of 21 republics. The Government has a centralized political system, with power concentrated in the presidency and; the office of the prime minister, a weak multiparty political system, and a ruling-party dominated bicameral legislature. Russia is a nuclear superpower and a vast and diverse nation that continues to develop politically, socially, and economically.

Tensions between the United States and Russia have increased on a number of issues that have contributed to ever-growing discord in U.S.-Russian relations. Russia has an active ongoing collection program targeting the United States. Russian espionage specializes in military technology and gas and oil industry technical expertise. Russia has provided various military and missile technologies to other countries of security concern. Finally, Russia's human rights record remains uneven and poor in some areas.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." 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

AG ¶ 6 expresses the security concern regarding 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The applicable condition in this case is: AG ¶ 7(b) “connections to a foreign person, group government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information . . . and the individual’s desire to help a foreign person, group, or country by providing that information” is applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 8(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,” is applicable to this Applicant and controlling for the following reasons:

Applicant has lived in the United States since 1992, and he became a naturalized United States citizen on July 11, 2000. From then until July 2003, Applicant held dual citizenship with Ghana and the United States, by maintaining his passport from Ghana. However, he thereafter became solely a United States citizen, and he returned his passport from Ghana. Applicant served in the United States Army from May 1997 to July 2002, and received an Honorable Discharge. Appellant’s two children are solely U.S. born citizens and residents. Applicant’s mother and two sisters are United States citizens and residents. He has minimal contact with his uncle in Ghana, and his mother-in-law and brother-in-law in Russia. Applicant does have more contact with his father in Ghana; however because of his father’s age and his lack of involvement with the government of Ghana, he is not a threat.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19 (a), "an inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19 (c), "a history of not meeting financial obligations" may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt because of the seven homes he owned which went into foreclosure.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: I do not find that any condition under AG ¶ 20 is applicable. While Applicant has written that since the homes went into foreclosure he does not owe any money on them, no evidence was introduced to establish that fact. Rather the credit reports indicate that Applicant has not resolved these overdue debts listed on the SOR. (Items 7-9.) Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Since no evidence was submitted to establish that the debts listed in the SOR have been resolved, Applicant has not mitigated the financial concerns of the Government.

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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on the reasons cited above as to why the Mitigating Conditions do not apply under Guideline F, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

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. through 1.d.:	For Applicant
Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.d.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge