



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



In the matter of:)	
)	
)	ISCR Case No. 11-00579
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

December 20, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant is a dual U.S. and Liberian citizen. He recently renewed his Liberian passport, and is unwilling to destroy it because he wants to be able to demonstrate that citizenship in connection with administering the estate of his mother who is a resident citizen there. He surrendered possession to his security officer, but recovered it when he was laid off. His cousin, who was raised by his mother, is a high-ranking official in the Liberian government. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 24, 2010. On May 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines C (Foreign Preference), and B (Foreign Influence). 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 for Determining Eligibility for Access to Classified Information, effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 16, 2011. He answered the SOR in writing (AR) on June 4, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 22, 2011, and the case was assigned to me on August 1, 2011. DOHA issued a Notice of Hearing on August 3, 2011, and I convened the hearing as scheduled on September 13, 2011. The Government offered exhibits (GE) 1 and 2, which were admitted without objection. Department Counsel also requested administrative notice of certain facts concerning Liberia as set forth in Hearing Exhibit (HE) I, and supported by Government publications submitted as Administrative Notice (AN) exhibits I through IV. After some discussion, Applicant agreed to the truth of these facts, of which I took administrative notice. Pertinent facts are set forth below. Applicant offered exhibits (AE) A through D, which were also admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until September 27, 2011, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on September 22, 2011. Applicant timely submitted additional evidence, which was marked AE E and AE F, and admitted without objection. Department Counsel's motion to request consideration of this evidence and my ruling admitting it are marked HE II.

Findings of Fact

Applicant is a 51-year-old former employee of a defense contractor, where he began working in May 2010, and was laid off when funding for his project ended on September 23, 2011. In an e-mail dated September 26, 2011, Applicant expressed his desire to continue the process of determining his eligibility for a security clearance for purposes of future employment. Pursuant to Directive ¶ 4.4, the determination of his eligibility will continue because his hearing commenced (and was completed) on September 13, 2011, before the date his employment ended.¹ In his response to the SOR, Applicant denied SOR ¶ 1.a, and admitted SOR ¶¶ 2.a and 2.b, with some explanations. Applicant's admissions, including his statements in response to DOHA interrogatories,² are incorporated in the following findings.

Applicant was born in Liberia. He attended a boarding school in Lebanon, where his father was born and raised, from ages 5 to 16. After graduating early from high school, he returned to Liberia to help work in his father's pharmacy and bakery business.³ His father immigrated to the United States in the late 1970s, and became a naturalized citizen. Applicant and his sister came to the United States in August 1979 to live with him. Applicant attended college from January 1980 to December 1984, and graduated with a bachelor's degree. He married his first wife in January 1985, and they

¹GE 1; HE II. See ISCR Case No. 05-04831 (App. Bd. Nov. 29, 2006.)

²GE 2.

³Tr. 63-64.

divorced in January 1988 with no children. Applicant became a naturalized U.S. citizen on January 9, 1996. He also started graduate school that month, and earned a master's degree in applied mathematics and computer science in January 1998. He married his current wife in September 2000, and they have two children ages 12 and 10. Applicant has never served in the military of any country, and never held a security clearance.⁴

During a visit to his mother's home in Liberia in 2010, Applicant renewed his Liberian passport. He wants to keep a valid Liberian passport for three reasons. First, it serves as his birth certificate since no other Liberian document exists to verify his birth there. Second, he wants to use it to prove his Liberian citizenship to ease his dealings with the authorities when he goes to Liberia to resolve the distribution of his elderly mother's estate. Third, he hopes to be able to retire in Liberia after his children are raised, if circumstances permit. Applicant has used his U.S. passport for all travel outside the country since he became a U.S. citizen. He has not used his current Liberian passport. He is unwilling to destroy the passport, but after learning that he could surrender the passport to his facility security officer instead he did so. This surrender occurred on September 15, 2011. As noted above, Applicant was laid off on September 23, 2011. He then requested and received possession of his Liberian passport, which remains in his possession.⁵

Applicant's wife and two children are natural-born citizens of the United States. Applicant's mother and father divorced when he was four years old. His father and his stepfather, who was French, are deceased. His stepmother was born in Lebanon, and is a naturalized U.S. citizen who resides here. He has a close relationship with his mother, who is a Liberian citizen. She is retired, after working as a teacher in Liberian public schools, but receives only a pension from her second husband's former employer and financial assistance from her children. Until October 2009, his mother lived primarily in France to be near Applicant's half-brother and half-sister. She has U.S. permanent resident status, and would spend three to six months per year here and the remainder in France. She was last in the U.S. in October 2009, when she moved back to Liberia to remodel the beachfront home that she owns there. Since then she has made a couple short visits to France to obtain prescription medicines. She planned to return to the U.S. during October 2011, to visit Applicant for four weeks, unless her lengthy absence causes problems with reentry as a permanent resident. She then planned to go to France for surgery, and to remain there with her other children while recuperating. Following that, she intends to return to and reside in Liberia.⁶

Applicant has at least monthly telephone contact with his mother, and provides her around \$1,500 to \$2,000 per year in financial assistance. In describing their relationship, Applicant testified, "she's an 80-year-old woman. She will not take no for an answer if I tell her 'I don't want to help you financially.' I do help her financially."

⁴GE 1; AE C; AE D; Tr. 6-7, 33-37, 63-64.

⁵AR; GE 2; AE A; AE E; AE F; Tr. 31-32, 37-44, 52-56, 87-88.

⁶GE 1; GE 2; Tr. 35, 47-48, 56-60, 65-66, 90.

During February and March 2010, he went to Liberia for about five weeks to assess the situation there and help his mother to remodel her house. He spent \$8,000 toward a new roof for her. While there, he stayed with a boyhood friend with whom he attended boarding school. Applicant attempted to buy the house from his mother, but they could not agree on a price. He feels that the value of the house has been severely reduced by the political unrest and instability in Liberia, although the situation has improved since the end of their recent civil war. All of Applicant's financial assets are in the U.S.⁷

Applicant's cousin serves as a very high ranking Liberian diplomatic official. He has served in his current position for at least 15 years, before which he performed similar duties in two other major western countries. He is the son of Applicant's mother's sister, who died when he was about ten years old. He was then raised by Applicant's mother in Liberia, while Applicant was attending boarding schools in Lebanon. Applicant's mother has a very close relationship with him, and considers him to be another son. Applicant has infrequent contact with him, once or twice per year, and does not consider him to be a brother. When Applicant returned to Liberia from boarding school, his cousin was in college and no longer lived with Applicant's mother.⁸

Three close friends who have known Applicant for a number of years wrote letters describing his outstanding character, integrity, trustworthiness, and dedication to his family.⁹ Applicant provided no other evidence concerning the nature of his duties, responsibility for protecting sensitive information, or work performance.

I take administrative notice of the facts concerning Liberia that are set forth in HE I, and they are incorporated herein by reference. Of particular significance are the facts that the government elected in 2005 has made progress toward restoring security and stability in the country following a period of instability, conflict, and civil war from 1990 to 2003. Liberia still experiences a high rate of crime and rampant corruption throughout government. Liberia is also on the State Department's Tier 2 Watch List for human trafficking. Applicant testified:

When I was there the situation is so explosive, especially now with the election coming in October, that people are really getting out of the country more than staying there. So the value of property is really not worth anything. . . . Liberia the last five years has become more stable, but stable to a Liberian is different than stable to an American or somebody like me that's been living here. There's a big difference in stability. . . . What I saw was not even close to stable.¹⁰

⁷GE 2; Tr. 43-51, 60.

⁸AR; GE 2; Tr. 60-65. Applicant's cousin's position is correctly described in the SOR, but only generically described herein to avoid disclosure of the specific identities of those involved.

⁹AE F.

¹⁰Tr. 45-46.

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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 security concerns involving foreign preference arise because, “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying under this guideline:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country;
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

The evidence in this case established the foreign preference DCs set forth in AG ¶¶ 10(a)(1), 10(a)(5), and 10(b). Applicant's possession and renewal of a current Liberian passport, after becoming a U.S. citizen in 1996, were affirmatively intended to obtain and facilitate recognition of his continuing Liberian citizenship by that government during his anticipated future travels there to resolve his mother's estate, in which he hopes to share, and potentially to live there in retirement.

AG ¶ 11 provides conditions that could mitigate foreign preference security concerns:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,
- (f) the vote in a foreign election was encouraged by the United States Government.

Applicant failed to establish mitigation under AG ¶¶ 11(a) or (b). Although his dual citizenship is based on his birth in Liberia and his mother's citizenship there, he has taken active measures after obtaining U.S. citizenship in 1996 to reaffirm and maintain his Liberian citizenship. His expressed refusal and unwillingness to renounce that citizenship or destroy his Liberian passport if required to obtain a U.S. security clearance was unequivocal. He did, however, express and act on his willingness to surrender his Liberian passport to the cognizant security authority. Upon termination of his employment, however, he resumed possession of that passport. Accordingly, mitigation under AG ¶ 11(e) is limited at present. That MC calls for actual surrender or destruction, not mere willingness to do so as AG ¶ 11(b) requires, and he is not willing to renounce dual citizenship. No evidence supports application of the other MCs.

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. Department Counsel correctly argued that the evidence in this case raised security concerns under two Foreign Influence DCs:

(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

(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.¹¹

Applicant has close and strong family ties with his mother, who has moved back to reside in Liberia where she is a citizen. She is also very close to Applicant's cousin, who she raised and considers to be another son. This cousin is a longstanding, high-ranking official in the Liberian government, whose duties involve furthering the interests of his country and its citizens. While Liberia is not a nation that is hostile toward the United States, or high on the list of nations engaged in active intelligence gathering, the government there suffers from rampant corruption and Applicant testified to its ongoing instability. The nature and position of Applicant's family connections there have substantial potential to generate conflicts of interest and heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (b).

These facts meet the Government's burden of production by raising the aforementioned Foreign Influence DCs. Applicant's close and significant relationships and connections with Liberia shift the burden to him to prove mitigation under applicable Appeal Board precedent. Department Counsel did not argue that the evidence raised concerns under AG ¶ 7(e),¹² and I find that Applicant's potential future interest in his mother's property there is not substantial enough to do so.

¹¹Tr. 75.

¹²"a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation"

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a) and (b) security concerns are:

(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; and

(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.

Applicant did not demonstrate that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his close and ongoing family ties in Liberia and his cousin's high-ranking position in their government. He is not particularly close to his cousin but his mother is, and Applicant admittedly is unable to deny his mother's requests for substantial amounts of money and other assistance. He offered insufficient evidence that his family's situation would make it unlikely that they could be subjected to foreign inducement, manipulation or duress, or that his relationships and loyalties in the U.S. are so deep and longstanding that they would outweigh his family obligations. Under such circumstances, he would be forced to choose between their interests and those of the U.S. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8 (a), (b), or (c).

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 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Security concerns in this case do not involve any personal misconduct, dishonesty, irresponsibility, or disloyal activity by Applicant. The primary whole-person issues of concern under these circumstances are his completely understandable and appropriate relationships with his mother, a resident citizen of Liberia, and his cousin, a high-ranking official of Liberia's government. It would be unrealistic to conclude that he has no ongoing obligations and loyalties toward his family members there, and all evidence is to the contrary. Due to his desire to participate substantially in the ultimate resolution of his mother's estate, and potentially return and live in Liberia when he retires, he is unwilling either to renounce his Liberian citizenship or destroy his Liberian passport. He was willing to temporarily surrender that passport, but presently retains possession of it since he was laid off. These considerations raise the realistic and substantial potential for pressure, coercion, exploitation, or duress, given the corruption and instability in Liberia, and are likely to continue. (AG ¶¶ 2 (8) and (9).) Although his immediate family and all financial assets are in the United States, Applicant offered insufficient evidence of professional, social, or financial ties to the United States to weigh in favor of a whole-person finding of exceptional allegiance to United States interests.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign preference and foreign influence considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge