



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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	)	
	)	ISCR Case No. 11-03879
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

January 31, 2012

**Decision**

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on July 19, 2010. On July 28, 2011, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR and requested a hearing before an administrative judge. The case was assigned to me on November 4, 2011. DOHA issued a notice of hearing on November 15, 2011, scheduling the hearing for December 15, 2011. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, presented five witnesses, and submitted two documents (AX) A and E. DOHA received the transcript (Tr.) on December 22, 2011.

### **Administrative Notice**

Department Counsel initially requested that I take administrative notice of relevant facts about Mauritania. Department Counsel withdrew the request prior to the hearing. Department Counsel stated that it is the Government's position that Mauritania does not pose a heightened risk. (Tr. 11)

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and offered explanations. He denied the overall statement that he is subject to foreign influence. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 46-year-old employee of a defense contractor. He was born in Mauritania. He obtained a degree in teacher training in 1993 from a training center in his country. He came to the United States in 2004. Applicant became a naturalized U.S. citizen in December 2008. He received a diploma from a technical school in the United States in May 2009, and is a certified electrician. Applicant has not held a security clearance. He has worked for his employer since August 2006. Applicant is married and has three children. (GE 1)

Applicant's wife is a U.S. citizen who was a Peace Corps volunteer in Mauritania. In 2001, they met in Mauritania and married in 2003. (Tr. 19) Applicant's wife met his family when they lived in Mauritania. His wife testified that they moved to the United States in 2004. Their children, who are six years old and three years old, are U.S. citizens. Applicant's wife works for a federal government agency. Applicant and his wife bought a house in 2006. The value of the home is approximately \$270,000. They have savings and retirement accounts in the United States. Applicant and his wife noted that they bought a piece of land in Mauritania before they left the country. He believes it is worth about \$1,000.

Applicant has a 21-year-old daughter from a previous relationship. She is a citizen and resident of Mauritania. He does not have contact with her. He knows that she is married. (Tr. 56)

The child's mother does not encourage a relationship with her daughter and Applicant. When Applicant and his wife visited Mauritania in 2007, he saw his daughter. He has not seen her since. (Tr. 59)

Applicant's mother is a citizen and resident of Mauritania. He is not sure about her age. He explained that birth certificates were not common at that time. (Tr. 52) He speaks to his mother once a month by telephone. (Tr. 52) He sends his mother approximately \$200 a month. (Tr. 54) He sends the money for her to one of his brothers as his mother does not read or write.

Applicant has one brother who is a citizen of Mauritania residing in France. He works in an airport in France.

Applicant's five brothers and two sisters are citizens and residents of Mauritania. The two sisters are married and have children. (Tr. 57) He occasionally calls one of his sisters or brothers. If they are together, he will speak to them. He has maintained minimal contact with them over the years. He knows that one works for a water company, one is an electrician, one is a policeman, and two are students in an American school.

Applicant explained at the hearing that he loved meeting foreigners who came to country to help with economic development work. His family is not a part of any religious or political group. His family in Mauritania has a friendly orientation toward Westerners. His family has been open to people of different ethnic backgrounds. He states they are a simple people who hold no animosity toward anyone. They have never been involved with any terrorist or extremist problems in Mauritania. (Tr. 14)

Applicant expressed his love for the United States. He contributes to the community in various ways. He has no financial assets in Mauritania. He points to a history of working for the United States and its interests, including, but not limited to, working here and abroad in military bases and American embassies. His ties and loyalty are to the United States.

A friend testified that she met Applicant and his wife in 2004 when he moved to the United States with his wife. They lived in her home for approximately one year until 2005. (Tr. 28) She describes Applicant as an honorable, reliable, polite, and respectful man. He is an excellent electrician and has had steady employment. (Tr. 26) She knows that he is grateful to be living and working in the United States. The friend has seen photos and videos of Applicant's family who live in Mauritania. She considers herself close to Applicant and his wife – almost like a “substitute grandmother” for the two children. (Tr. 29) They see each other socially about once a month.

A former employer testified that he met Applicant in 2004. His company hired Applicant to work for him. He describes Applicant as a valued employee who has worked on various projects over the years. (Tr. 31) He believes Applicant is a “prince” and a stellar employee. He has a high degree of integrity, and is trustworthy, loyal, and

honest. (Tr. 32) He would recommend Applicant to anyone. The employer also sees Applicant and his family socially.

Another former Peace Corp volunteer testified that he has known Applicant since 2004, and met his wife in Mauritania when they were in the Peace Corps. He was also living in the house that Applicant and his wife rented that was referenced above. He has remained friends with Applicant and his wife. He testified that Applicant is extremely respectable and upstanding. He is dedicated to his work and his family. (Tr. 42)

A friend testified that he met Applicant in 2004. He has continued a friendship with Applicant and his family. The friend also knows Applicant's family who lives in Mauritania. He describes Applicant as a person who came to the United States and has succeeded in creating a life for himself and his wife and two children. (Tr. 46)

Applicant's current employer describes him as a valued employee. He notes that Applicant has been involved in many successful projects for the company. He completed an apprenticeship and is in the process of obtaining a Journeyman Electrician's license. He describes Applicant as reliable and professional. He has been involved with projects which require a security clearance. He has benefitted the company greatly. (AX A)

## **Policies**

"[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

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

The security concern under this guideline is set out in AG ¶ 6:

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.

One disqualifying condition under this guideline is relevant. A disqualifying condition may be raised by “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.” AG ¶ 7(b).

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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. 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 operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant is a naturalized U.S. citizen. He was born in Mauritania. He married a U.S. citizen in 2003. He and his wife have two children who are U.S. citizens.

Applicant’s mother, child, five brothers and two sisters live in Mauritania. “[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 has not rebutted this presumption.

After considering the totality of Applicant’s family ties to Mauritania as well as each individual tie, I conclude that Applicant’s family ties are sufficient to raise an issue of a potential conflict of interest. Applicant sends his mother money and talks to her on the phone. He also talks to his brothers and sisters. Based on his relationship with his mother and other family members, I conclude that AG ¶ 7 (b) is raised.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a).

Security concerns under this guideline can be mitigated by showing “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.” AG ¶ 8(b).

Applicant came to the United States in 2004. He married a U.S. citizen. He became a U.S. naturalized citizen in 2008. He has two children who are U.S. citizens. He and his family have professional and personal ties to the United States. There is no indication that Applicant’s relatives are in positions or are involved in activities that would place Applicant in a position of having to choose between his family and those of the United States. He does not maintain a relationship with his adult child in Mauritania. In light of Applicant’s close ties to the United States, he would not choose his relatives in Mauritania over his life in the United States. I find mitigating AG 8(a) and 8(b) apply.

### **Whole-Person Concept**

Under the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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 that guideline, but some warrant additional comment.

Applicant is a naturalized U.S. citizen who has lived in the United States since 2004. His wife and children are U.S. citizens who reside with him in the United States. He was articulate, candid, sincere, and credible at the hearing. Applicant’s home is in the United States. Applicant has been successful in his work in the United States. His current employer recommends him for his professionalism and integrity.

Applicant is firmly entrenched in the United States. All of his assets are located in the United States. Although Applicant has relatives in Mauritania, I am convinced that he will resolve any issues in favor of the United States.

There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. His family members in Mauritania do not know the specifics of his work.

Regarding Applicant's life in the United States, he is an American citizen, with a stable family, social, and professional life. His life is focused here. He is admired by his peers. His career has blossomed in the United States. He is active in his community. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. In light of these facts and the country at issue, I find that Applicant successfully mitigated foreign influence concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegation in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a-d: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch  
Administrative Judge