



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



In the matter of:)
)
) ISCR Case No. 11-06895
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant, 34, was born in Sierra Leone and became a naturalized U.S. citizen in 2006. Her mother is a citizen and resident of Sierra Leone. Her father and sister are naturalized U.S. citizens residing in Sierra Leone. One of her immediate family members is a high-level government official in Sierra Leone. She failed to demonstrate that her contacts in Sierra Leone do not pose a security risk, and that she would not be placed in a position of having to choose between loyalty to the United States and her connections to foreign family members. She failed to mitigate the foreign influence security concerns raised. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 17, 2011. On July 27, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence).¹

¹ DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

Applicant answered the SOR on August 8, 2012, and requested a hearing before an administrative judge.

The case was assigned to me on May 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on June 3, 2013, scheduling a hearing for July 3, 2013. At the hearing, the Government offered exhibits (GE) 1 through 3. GE 1 and 2 were admitted without objection. GE 3 was made part of the record, and considered for administrative notice purposes, but it was not admitted. Applicant testified, presented the testimony of one witness, and submitted three exhibits (AE 1 through 3), which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 12, 2013.

Procedural Issue

Department Counsel requested I take administrative notice of certain facts concerning the government of the Republic of Sierra Leone. She provided source documents (official U.S. Government publications) to show detail and context for those facts. Applicant did not object, and I granted Department Counsel's request.

Findings of Fact

Applicant admitted the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. After a thorough review of all the evidence, including her testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 34-year-old senior consultant working for a large government contractor. Applicant and her parents were born in Sierra Leone. At age nine, Applicant, her sister (born in England), and her parents immigrated to the United States. She was raised and educated in the United States. She attended elementary school, high school, and college in the United States. She earned a master's degree in business administration from a U.S. university in May 2006.

Applicant's father is a dual citizen of Sierra Leone and the United States. After retiring from his job in the United States, Applicant's father moved back to Sierra Leone where he resides. He travels frequently to the United States where he lives for periods of time. Applicant's sister is a naturalized U.S. citizen residing in Sierra Leone. She moved back to Sierra Leone three years ago to attend law school in that country. Applicant does not know whether her sister intends to live permanently in Sierra Leone or to return to live in the United States. Applicant's mother is a citizen and resident of Sierra Leone, and a registered alien in the United States.

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant has an immediate family member that worked for the Sierra Leone government during prior government administrations. The immediate family member is a personal friend of Sierra Leone's president, and is currently serving in a high-level government position.

Applicant visited her parents in Sierra Leone in 2010 and 2011. These are the only two times she has visited Sierra Leone since she immigrated to the United States. Applicant's parents visit her in the United States on a yearly basis. They also provide Applicant and her daughter with gifts and money during special occasions. Applicant's aunt (a U.S. naturalized citizen and resident), her sister, and mother are aware that Applicant submitted a security clearance application.

Applicant married her spouse in July 2004, and they were divorced in July 2009. She has a six-year-old daughter of this marriage. She has been working for government contractors since 2007. She was hired by her current employer, a government contractor servicing different government agencies, in March 2010. This is her first security clearance application.

Applicant presented the testimony of a West Point graduate who served on active duty in the U.S. Army for 28 years. After his retirement, he established his own company and provides consulting services to different U.S. agencies. He has known Applicant since 2005, when she started working for him. He later mentored and trained Applicant in her professional career. He believes Applicant is exceptionally open-minded. In his opinion, Applicant has a high degree of loyalty to the United States, her family, her child, and her coworkers.

He does not believe Applicant is a security risk. Even though Applicant is close to her mother, when her mother decided to go back to Sierra Leone, Applicant elected to stay and make her life in the United States. He is not aware of any instance where Applicant's mother had placed any pressure on Applicant to go back to Sierra Leone. Applicant has talked to her reference about the possibility of going back to Sierra Leone for professional development purposes.

I take administrative notice of the following facts. Sierra Leone is a constitutional republic with a directly elected president and a unicameral legislature. The United States and Sierra Leone have had diplomatic relations since Sierra Leone's independence from Great Britain in 1961. Between 1991 and 2002, Sierra Leone was involved in a civil war that destroyed infrastructure and stymied political, social, and economic development.

Sierra Leone is one of the most stable counties in its region and contributes significantly to United Nations peacekeeping operations. The United States is among the largest bilateral donors providing financial assistance to Sierra Leone. The Sierra Leone government passed one of Africa's toughest anti-corruption laws, made high-profile arrests, and secured convictions in a majority of its prosecutions. Notwithstanding, the country continues to grapple with entrenched corruption, poor

health conditions, weak governmental institutions, high unemployment, slow economic growth, abject poverty, and inadequate social services. The country has major human rights problems.

Policies

Eligibility for access to classified information may be granted “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. 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).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The government's concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

(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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.²

Applicant has frequent contacts and a close relationship of affection and/or obligation with her parents. Her mother is a resident and citizen of Sierra Leone. Her father is a dual Sierra Leone and U.S. citizen, residing in Sierra Leone. Her sister is a naturalized U.S. citizen residing in Sierra Leone. Applicant has an immediate family member who is a high-level government official in Sierra Leone. The extent of her close relationship with her immediate relatives is demonstrated by her frequent contacts with them. Applicant and her daughter received presents from her parents. She visited Sierra Leone in 2010-2011, and her parents' frequently traveled to the United States to visit with Applicant.

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Sierra Leone agents, criminals, or terrorists operating in Sierra Leone may exploit the opportunity to obtain sensitive or classified information about the United States. With its negative human rights record and its government corruption, it is conceivable that Applicant or her family members could be subject to coercion.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that the above mitigating conditions partially apply, but do not fully mitigate the security concern. Applicant's evidence is insufficient to establish that it is unlikely she will be placed in a position of having to choose between the interests of a foreign individual or nation and the interests of the United States.

In deciding whether Applicant's family members are in a position to be exploited, I considered Sierra Leone's form of government.³ The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in

³ The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States.

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. There is no evidence to show that Sierra Leone's government has conducted or has the capability of conducting any intelligence collection operations against the United States.

The relationship of Sierra Leone with the United States places a significant burden of persuasion on Applicant to demonstrate that her relationships with her immediate family members living in Sierra Leone do 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 immediate relatives living in Sierra Leone who may be coerced by terrorists, criminals, or governmental entities in that country.

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).

There is no evidence that intelligence operatives, terrorists, or criminals from Sierra Leone seek or have sought classified or economic information from or through Applicant, her parents, sister, or other relatives living in Sierra Leone. However, we cannot rule out such a possibility in the future. This places the burden of persuasion on Applicant to demonstrate that her contacts in Sierra Leone do not pose a security risk, and she is not in a position to be forced to choose between loyalty to the United States and her connections to family members.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationship with her family members living in Sierra Leone. Applicant left Sierra Leone at age nine. She immigrated to the United States with her parents and sister. She remained in the United States when her mother and father returned to Sierra Leone. She became a naturalized U.S. citizen in 2006.

Applicant has made the United States her home since 1988. She was raised and educated in the United States, and has been a productive U.S. citizen. She elected to remain in the United States when her mother returned to Sierra Leone. She is raising her six-year-old daughter as an American citizen. Applicant has established strong connections to the United States. The available evidence does not establish whether all of Applicant's financial and property interests are in the United States. Nor does it

establish whether her parents have significant financial and property interests in Sierra Leone that Applicant may one day inherit.

The record evidence fails to support a determination that Applicant's ties and sense of obligation to the United State are sufficiently strong that she could be expected to resolve any conflict of interest in favor of the United States, even under circumstances detrimental to her parents and other relatives in Sierra Leone.⁴

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline B in my whole-person analysis. Considering the evidence as a whole, Applicant's favorable evidence is insufficient to demonstrate that her contacts in Sierra Leone do not pose a security risk, and that she would not be placed in a position of having to choose between loyalty to the United States and her connections to foreign family members. On balance, and considering the evidence as a whole, Applicant failed to mitigate the Guideline B 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge

⁴ See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006).