



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



In the matter of:	)	
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	)	ISCR Case No. 12-03559
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

August 19, 2014

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On February 28, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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 with an undated written response to the SOR (RSOR), and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on May 2, 2014. DOHA issued a notice of hearing on May 12, 2014, and the hearing was set for June 19, 2014. Because of a scheduling conflict, DOHA issued a second notice of hearing on May 27, 2014, and I convened the hearing as scheduled on June 25, 2014. The Government offered Exhibits 1 through 7, which were received and admitted without objection. Applicant testified on his own behalf and submitted Exhibit A, which was also admitted without objection. DOHA received the transcript of the hearing (Tr) on July 2, 2014. At the hearing, the record was kept open

until July 17, 2014, to allow Applicant to submit additional evidence. The documents that were timely received and incorrectly identified by Applicant as Exhibit 1 through 5, but now properly identified as Exhibits B through F, have been entered into evidence without objection. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts relating to the country of Ghana. The request and the attached documents were admitted into evidence as Exhibit 7. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

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

Applicant is 43 years old. He was born in Ghana in 1971, and he moved to the United States in 1985, when he was 13. He became a United States citizen in 1987. (Tr at 29-31.)

Applicant has been married to his present wife since 2003. They have three children, two who were born in the United States and reside with Applicant, and one who was born and resides in Ghana with Applicant's wife. Applicant's parents are United States citizens and residents, and his brother and sister reside with their families in the United States and are U.S. citizens.

Applicant received a Bachelor of Science degree in Mechanical Engineering in the United States in 1995. Applicant is employed as an Engineer Fellow by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Paragraph 1 (Guideline B - Foreign Influence)**

The SOR lists five allegations regarding Foreign Influence, under Adjudicative Guideline B:

1.a. It is alleged in the SOR that Applicant's wife is a citizen and resident of Ghana. Applicant admitted this allegation in his RSOR. Applicant testified that he met his wife in the United States in 2001, and they were married here in 2003. In 2003, their first child was born in the United States. Applicant's wife first came to the United States on a visitor's visa, and she remained in the U.S. after the visa expired. His wife had applied for permanent residency status after they were married, and Applicant testified that it had been approved pending an interview. (Tr at 34, 50.)

In April 2004, Applicant drove to San Diego with his wife, and their first child. During their trip they took an accidental and unintended detour and were unable to exit the road before entering Mexico. As they attempted to reenter the U.S., they were stopped by a United States customs officer. Applicant indicated that he later learned that his wife was accused of representing herself as a U.S. citizen, but he strongly averred that she had never stated that she was a citizen of the U. S. She was detained for two weeks, during which she was coerced into admitting in writing that she had represented herself as a United States citizen. After two weeks she was released on bail. Approximately a year and a half later, their second child was born in the United States. (Tr at 34-35, 51-55.)

In November 2005, his wife received a deportation notice ordering her to return to Ghana. His wife has remained in Ghana since 2005, and Applicant has remained in the United States with the two children who were born here. Applicant filed a petition in 2009 to allow her to return to the United States which was denied. In 2010 or 2011, after he received the rejection, he filed a second appeal, but he has received no response. He has visited his wife in Ghana every year or every other year, but they both agreed that he would continue to live in the United States for the benefit of the children living with him. (Tr at 36-38.) Applicant talks to his wife by phone about four times a week. (Tr at 43.) He believes that his wife has not been allowed to reenter the United States because of the accusation that she misrepresented her citizenship status to an American official. (Tr at 56-57.)

1.b. It is alleged in the SOR that Applicant's son is a citizen and resident of Ghana. Applicant admitted this allegation in his RSOR. Applicant testified that his son is 20 months old and was born in Ghana; he was conceived in Ghana during a trip Applicant took there. In April 2014, Applicant filed a petition for his son, since he was born abroad as the son of a U.S. citizen, to allow him to be considered a United States citizen and live with Applicant in the United States. (Tr at 41.) Applicant testified that the process has been approved and his son will be coming to the United States to live in the current year. (Tr at 60.)

1.c. It is alleged in the SOR that Applicant's mother-in-law is a citizen and resident of Ghana. Applicant admitted this allegation in his RSOR. Applicant testified that his mother-in-law is an unemployed widow. She had worked with her late husband, who had owned a pharmacy. Applicant only speaks to his mother-in-law when he travels to Ghana. (Tr at 43.)

1.d. It is alleged in the SOR that Applicant provides monthly financial support to his wife and son in the approximate amount of \$200. Applicant admitted this allegation in his RSOR. Applicant testified that he sends \$200 a month. (Tr at 63-64.)

1.e. It is alleged in the SOR that Applicant owns real estate in Ghana worth an estimated \$118,000. Applicant admitted this allegation in his RSOR. He testified that this is a house in Ghana that he purchased in 2010 as joint tenants with his wife, and this is the house in which his wife lives. The purchase price was \$118,000, and they have about \$20,000 left to be paid. (Tr at 44-45.)

Applicant testified that he also has assets in the United States. He owns a home with an estimated value of \$500,000. He also has a 401k worth \$120,000. (Tr at 67-68.) Applicant expressed strong feelings of loyalty and support for the United States; he also expressed his continuing devotion to his wife and son, both of whom continue to reside in Ghana. (Tr at 65-66, 70-71.)

## **Mitigation**

Applicant submitted several post-hearing exhibits. These included: a Performance Review for 2013, in which Applicant was rated, "Constantly Exceeds Expectations," and he was described as an "exemplary employee" (Exhibit B); 19 Certificates of Appreciation that Applicant has received during his current employment (Exhibit C); six extremely positive character letters, including two from high-level directors and program managers at Applicant's current employer who have known Applicant for 10 years. One director described Applicant as having a "high level of performance and integrity [that Applicant] displays every day," and the second director stated "in my ten years working with [Applicant] I have never once had a reason to question his loyalty to our Company, our Program and most importantly, our Country. [Applicant] is an outstanding citizen." (Exhibit D.) I reviewed and considered all of the mitigating material submitted by Applicant.

## **Current Status of Ghana**

I take administrative notice of the following facts regarding Ghana. Following Ghana's independence from the United Kingdom, the United States established diplomatic relations with Ghana in 1957. Ghana has developed a democratic government after 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.

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. (Exhibit 7.)

Applicant testified that his native country of Ghana is a democratic, peaceful country that has had a continuing cordial relationship with the United States. (Tr at 46-47.)

Applicant also submitted a U.S. Department of State report, dated January 22, 2014, and titled, "U.S. Relations With Ghana." (Exhibit F.) The report states,

The United States and Ghana share a long history promoting democracy, human rights, and the rule of law. Ghana has set an example for countries throughout Africa in promoting governance and regional stability.

The U.S. and Ghanaian militaries have cooperated in numerous joint training exercises through U.S. Africa Command, and there is a bilateral international Military Education and Training (IMET) program, in which U.S. facilitates the development of an interoperable peacekeeping capacity among African nations.

The United States has enjoyed good relations with Ghana at a nonofficial, people-to-people level since Ghana's independence. Thousand of Ghanians have been educated in the United States. Close relations are maintained between educational and scientific institutions, and cultural links are strong, particularly between Ghanians and African-Americans.

### **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**

### **Paragraph 2 (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. Those that could be applicable in this case include the following: AG ¶ 7 (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.” Applicant’s wife and son, who are citizens and residents of Ghana, make AG ¶ 7(a) a concern to the Government. Applicant continues to have a close and meaningful relationship with his wife, which suggests that he is at “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” [Also 7(e).]

AG ¶ 8 provides conditions that could mitigate security concerns. AG ¶ 8(b) states, “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(f) is also applicable because “the value . . . of the foreign . . . property interests is such that they are unlikely to result in a conflict and could not be used

effectively to manipulate, or pressure” Applicant. I find that these mitigating conditions are applicable to this Applicant and controlling in this case because of the following reasons: While Applicant was born in Ghana, he moved to the United States when he was 13, and he has lived here for 30 years, and been a United States citizen for 27 years; Applicant’s mother, father, sister, brother, and their families are all United States citizens and residents; all three of Applicant’s children are United States citizens, and although only two live here now, the third child will be moving to the U.S. this year; Applicant received his college education in the U. S., and he has only been employed in the United States; Applicant received very positive character letters from individuals who lauded Applicant’s loyalty and integrity; finally, Applicant has significantly more assets in the United States compared to his assets in Ghana.

Additionally, I considered Applicant’s credible testimony, in which he expressed strong feelings of loyalty and support for the United States; and finally, I considered the fact that Ghana, the country in which Applicant’s wife continues to live until such time as she may be allowed to return to the United States, is a country with a democratic Government and a positive relationship with the United States. Therefore, I find that Applicant does have such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. interest. I conclude Guideline B for Applicant.

### **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 under Guideline B. Based on all of the reasons cited above as to why the mitigating conditions apply, I find that the evidence leaves me with no significant questions or 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 mitigated the security concerns under the whole-person concept.

### **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. - 1.g.:           For Applicant

### **Conclusion**

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

Martin H. Mogul  
Administrative Judge