



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



In the matter of:)
)
) ISCR Case No. 15-08581
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/12/2017

Decision

WHITE, David M., Administrative Judge:

Applicant was born in Ethiopia. He became a naturalized U.S. citizen in 2013. His Ethiopian passport expired in 2016. His wife and children are applying for permanent U.S. residence, and several other family members are already U.S. citizens or residents. However, he retains significant connections to many family members who are still residents and citizens of Ethiopia. Applicant failed to mitigate resulting security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 23, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 23, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence. The action was taken under 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 after September 1, 2006. The SOR detailed reasons why the DoD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance.

Applicant answered the SOR in writing (Answer) on June 22, 2016, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 4, 2016, and issued a Notice of Hearing on November 17, 2016, scheduling the hearing for December 5, 2016. The hearing convened as scheduled. The Government offered two exhibits (GE 1 and 2) into evidence. Applicant objected to GE 2, which was inadmissible under Directive ¶ E3.1.20 because no witness was produced to authenticate the contents of the interview summary from the Report of Investigation. GE 1 was admitted without objection, but GE 2 was not admitted or considered. Applicant testified and offered 12 exhibits (AE A through L), which were admitted without objection. The Government also requested administrative notice of facts about Ethiopia, to which Applicant had no objection. The request was marked Hearing Exhibit (HE) I, and administrative notice was taken of the facts stated therein. I granted Applicant's request to leave the record open until December 19, 2016, for submission of additional evidence. Applicant timely submitted AE M while the record remained open, and it was admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 15, 2016.

Findings of Fact

In his Answer, Applicant admitted all of the facts alleged in the SOR. His admissions are incorporated in the following findings of fact.

Applicant was born in Ethiopia in 1974. He has been employed by a defense contractor since 2014. He is a high school graduate who has attended several years of college classes and aviation maintenance courses. He immigrated to the United States in December 2007, and became a naturalized U.S. citizen in May 2013. He is married and has two young children. He has no military service and has never held a security clearance. (GE 1; AE C; AE E; AE H; Tr. 8-9, 36, 47-48.)

Applicant has a large number of immediate family members who were born as resident citizens of Ethiopia. He married his wife, an Ethiopian citizen who has been residing in Canada since 2008, in April 2015. Their first child was born in Canada in September 2014, and their second child was due to be born in Canada shortly after the date of Applicant's hearing. Applicant has petitioned for his wife and children to be granted permanent resident status in the United States. (GE 1; AE D; Tr. 46-49.)

Applicant's father is deceased. His mother moved to the United States from Ethiopia, with permanent resident status, in June 2016. She now resides with Applicant. (GE 1; Tr. 53-55, 71.)

Three of Applicant's four sisters are resident citizens of Ethiopia. None of them, or their spouses, work for the Ethiopian government. One of Applicant's sisters now lives in the United States, as a permanent resident alien. He does not talk to his sisters about his work. (GE 1; Tr. 55-61.)

Applicant has three brothers, who were born in Ethiopia but currently reside in the United States. One became a naturalized U.S. citizen in 2012, and the other two moved to the United States around August and November 2016. He also has a half-sister who is a naturalized U.S. citizen, and another half-sister who is a resident citizen of Ethiopia and works as a school secretary. (GE 1; AE A; AE B; Tr. 61-64.)

Since coming to the United States, Applicant has sent money to his brothers and sisters in Ethiopia when they needed funds for medical care or other unplanned expenses. He and a friend built a house there on land they purchased under a long-term lease about 15 years ago. His friend's sister now occupies that home. He left a bank account open in Ethiopia when he came to the United States, but is not sure whether it has been closed or has any funds in it. With his siblings, he also owns a share of the home his deceased father owned in Ethiopia, but the transfer from his father's estate has not been finalized. He owns no real property in the United States, but has an 11-year-old car and checking, savings, and retirement account balances totaling about \$107,000. (Tr. 66-73.)

Applicant's mother-in-law is also a resident citizen of Ethiopia. She makes and sells handicrafts, and cares for Applicant's brother-in-law who has a disability. Applicant's father-in-law is deceased. (Tr. 49-50.)

Applicant initially came to the United States with an immigrant visa in 2006, using his Ethiopian passport. He renewed his Ethiopian passport in 2011, with an expiration date in August 2016. He last used that passport for travel in 2012, prior to obtaining his U.S. citizenship in May 2013, and U.S. passport in May 2014. He provided a copy of the 2011 Ethiopian passport to document these facts. He retained the expired Ethiopian passport in case it might be needed for identification or another purpose. He testified that Ethiopia does not recognize dual citizenship, and he has no intention of applying for another Ethiopian passport. (Answer; GE 1; AE H; AE L; Tr. 22, 51-53.)

Applicant submitted a letter from his second-level supervisor. They have worked together for two years. He described Applicant as one of the key players in the success of their organization, who produces quality work, performs with attention to detail, inspires others, and exhibits both reliability and a great attitude. (AE M.)

I take administrative notice of the facts concerning Ethiopia that are set forth on pages 2 and 3 of HE I. Highlights include Ethiopia's contentious history with its neighboring country, Somalia, and threats to U.S. interests arising from the presence of operatives from al-Qaida and al-Shabaab terrorist groups. Ethiopia also has significant human rights problems, including use of coercion and excessive force against its own citizens and foreigners, and restrictions on free expression and association. The U.S. State Department recently issued a Travel Warning suggesting that U.S. citizens defer all non-essential travel to Ethiopia due to ongoing unrest that has led to hundreds of deaths, thousands of arrests, as well as injuries and extensive property damage; and reporting that internet, cellular data, and phone services have been periodically restricted or shut down throughout the country. (HE I; AN III.)

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 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. Directive ¶ E3.1.15 states that, "[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."

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.

Finally, as emphasized in Section 7 of Executive Order 10865, "[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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline C, Foreign Preference

AG ¶ 9 sets forth the security concern involving foreign preference:

When 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 one condition supported by evidence in this case that could raise a security concern and may be disqualifying:

(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.

Applicant had an active Ethiopian passport that expired between May 2016, when the SOR was issued, and his hearing date in December 2016. He only used the Ethiopian passport before he became a U.S. citizen in 2013, and he obtained a U.S. passport in 2014. He has no intention to renew or obtain another Ethiopian passport. The evidence raised the above disqualifying condition as of the time the SOR was issued, and shifts the burden to Applicant to rebut, extenuate, or mitigate the security concern.

AG ¶ 11 provides a condition that could mitigate security concerns in this case:

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's Ethiopian passport expired in August 2016, and he has no intention to acquire another one. That passport, which he was required to maintain as a permanent resident alien prior to 2013, is now invalidated. Full mitigation of Guideline C security concerns was established under AG ¶ 11(e).

Foreign Influence

AG ¶ 6 explains the security concerns pertaining to foreign influence as follows:

Foreign contacts and interest 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 sets out three conditions that could raise security concerns and may be disqualifying in this case:

(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, or coercion;

(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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant has one brother and one half-sister who are also naturalized U.S. citizens, but all of his and his wife's remaining immediate family members maintain Ethiopian citizenship. Several of them have obtained or are petitioning for permanent U.S. resident status, or are temporarily living in the United States. However, three sisters, a half-sister, and Applicant's mother-in-law still reside in Ethiopia, where his family still holds all of its real property assets. These relationships raise security concerns about his obligation or desire to assist those family members by providing sensitive or classified information, if faced with pressure or coercion from an outside source. The presence of active anti-U.S. terrorist operatives and the overall human rights situation that currently exists in Ethiopia create a heightened risk of foreign inducement, manipulation, or exploitation. There is substantial evidence to establish security concerns under AG ¶¶ 7(a), 7(b), and 7(d) based on these relationships, thereby shifting the burden of proof to Applicant to demonstrate mitigation.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. The three with potential application in mitigating the above security concerns in this case 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.

AG ¶¶ 8(a) and 8(c) do not provide mitigation under the facts in this case. Applicant's wife, mother, two brothers, four sisters, half-sister, and mother-in-law are citizens of Ethiopia, where a heightened risk of foreign exploitation or manipulation exists. He maintains regular relationships and communication with his family members, to include providing funds to them as needed. This is commendable, but demonstrates that the contacts and relationships are neither casual nor infrequent. Some of them are currently living in the United States, but many are not.

AG ¶ 8(b) has only minimal application to date. Applicant moved to the U.S. less than ten years ago to work in the aviation industry, and has been a U.S. citizen for less than four years. His wife and children still reside in Canada. Both of his ownership interests in real property are in Ethiopia, as are a significant number of his family members. While several family members recently have, or soon will, reside in the U.S., the evidence does not yet clearly establish that Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest in protecting sensitive information or technology.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Some mitigating evidence weighs in Applicant's favor. He is an intelligent and articulate person, who has chosen to live and work in the United States since December 2007. His wife and two children are applying for permanent residence in the United States, and several of his family members are already U.S. citizens or permanent residents. His Ethiopian passport was recently invalidated through expiration, and he has no intention to apply for another one.

There are no allegations of any misconduct by Applicant. He does, however, continue to have close connections to Ethiopia through numerous family members and all of his real property interests. He provided insufficient evidence that the resulting potential for pressure, coercion, exploitation, or duress is diminished at present.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, Applicant has not sufficiently mitigated the security concerns arising under Guideline B. Overall, the record evidence generates significant doubt as to Applicant's present eligibility and suitability for a security clearance.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a through 2.f:	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