



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



In the matter of:

ISCR Case No. 16-01879

Applicant for Security Clearance

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

03/13/2018

**Decision**

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the Foreign Influence security concerns arising from his continuing family connections in Ethiopia, but no Foreign Preference concerns were raised. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

**History of Case**

On February 16, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 18, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on September 13, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 13, 2017. DOHA issued a Notice of Hearing on April 27, 2017, setting the hearing for May 15, 2017. On that date, Department Counsel offered Government Exhibit (GE) 1 into evidence. Applicant testified but offered no documentary evidence. I took administrative notice of the facts concerning Ethiopia that are set forth on pages 2 through 4 of the Government's Request for Administrative Notice, which is marked Hearing Exhibit (HE) II and included in the record.<sup>1</sup> DOHA received the hearing transcript (Tr.) on May 23, 2017.

### **Findings of Fact**

Applicant is 45 years old. He is married with two young children who were born in the United States. He was born and lived in Ethiopia until age 29. He graduated from an Ethiopian university before coming to the United States, and earned a U.S. bachelor's degree in aviation maintenance management in 2014. He came to the United States in 2001 on a business visa, was subsequently awarded refugee status, and became a naturalized U.S. citizen in April 2010. He has been employed by a major U.S. aerospace company since June 2007. (GE 1; Tr. 38, 50-53.)

Applicant sought, and was granted, refugee status because he was threatened with arrest and persecution due to his significant anti-government activities as a member of an ethnic-based liberation organization in his native region of Ethiopia. Although he made multi-week trips to Ethiopia in 2010 and 2015 to visit family and friends, he testified that he does not intend to return to that country because the ongoing ethnic turmoil, mass arrests, and daily killings in his native region would pose an undue risk to himself and his family. The home that he owns and all of his financial assets are located in the United States. (Tr. 38, 49-53, 59-60.)

Applicant sponsored his mother to come to the United States, and she obtained permanent resident status. However, she has returned to Ethiopia, where he thinks that she will continue to live while visiting him in the United States on occasion. She lives with Applicant's two half-brothers who are her children, and is caring for the younger one. He also has a half-brother who is an Ethiopian citizen but permanent U.S. resident, and two half-brothers who are resident citizens of Ethiopia from his father's side of the family. Of five half-sisters from his father's side of the family, two have died and the remaining three are resident citizens of Ethiopia. He has little to no contact with any of his half-siblings on his father's side, but keeps in close touch with his mother and the two brothers who live with her. None of these family members have ever worked for the Ethiopian government. (GE 1; Tr. 35-46.)

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<sup>1</sup> HE I is the Government's Exhibit Index.

Applicant's parents-in-law are also resident citizens of Ethiopia. They are retired, and Applicant does not know what employment they formerly held. He and his wife "sometimes send money to support them." (Tr. 39.) He also sends money to help support his mother in Ethiopia. (Tr. 50.)

During Applicant's 2015 visit to Ethiopia, he purchased an identity card that showed he was born there and functioned as a multi-visit entry visa when used with his U.S. passport. This was neither an Ethiopian passport nor an indication of continuing Ethiopian citizenship, which Applicant renounced when he became a U.S. citizen. Although the card was supposed to be valid for entry into Ethiopia for five years, Applicant was informed unofficially that the government had cancelled this program and the card would no longer be recognized. He never applied to renew the Ethiopian passport he used to initially enter the United States in 2001, which expired years ago. (GE 1; Tr. 29-34, 47-48.)

I have taken administrative notice of facts contained in U.S. Government publications concerning the Federal Democratic Republic of Ethiopia, as outlined on pages 2 through 4 of HE II, including the following: Ethiopia is in a declared State of Emergency, including provisions permitting government arrest of individuals without court order for activities that might otherwise be considered routine. The State Department warns U.S. citizens of the risks of travel there due to civil unrest and anti-government protests. Terrorist organizations, including Al-Qaida affiliate Al-Shabaab present a continuing threat of attacks, kidnapping, assassinations, and hijackings against U.S. citizens and interests there. The most significant human rights violations include harassment and intimidation of opposition members and supporters. (HE II.)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's national security 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(b) and 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 national security eligibility 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 who applies for national security eligibility 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 eligibility for access to classified information or assignment in sensitive duties. 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 EO 10865 provides, “Any 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 B: Foreign Influence**

AG ¶ 6 expresses the security concerns regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying. Two of them are potentially applicable:

(a) contact, regardless of method, 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;<sup>2</sup> 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Ethiopia is in a declared State of Emergency with the government exercising extra-judicial measures against perceived members and supporters of insurgent opposition groups. In addition, anti-U.S. terrorist organizations are present and active. Applicant fled Ethiopia to escape arrest and persecution for anti-government activities by an organization of which he was known to be an active member. These facts place a significant burden of persuasion on Applicant to demonstrate that his connections and relationships with family members, who are resident citizens of Ethiopia, do not create a heightened risk of foreign influence or pose a security risk. Applicant's immediate family relationships are presumed to be close and loving. Applicant offered no evidence contrary with respect to his mother, two half-brothers who live with her, and parents-in-law; although he has no contact with the half-siblings from his father's side of the family. The evidence is sufficient to raise security concerns under AG ¶¶ 7(a) and 7(b), shifting the burden to Applicant to prove mitigation.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

(a) the nature of the relationship 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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group,

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

government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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 demonstrated 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 as a consequence of his virtually non-existent relationships with the two half-brothers and three surviving half-sisters from his father's side of the family who reside in Ethiopia. Mitigation under AG ¶ 8(c) was established concerning those family members. However, he provides financial support and has close personal relationships with his mother, two half-brothers who live with her, and his parents-in-law. They have no direct connections to the Ethiopian government or terrorists there, but Applicant's close connections to a recognized insurgent opposition group create continuing and significant potential for conflict of interest and risk of coercion, exploitation, manipulation, or pressure. Accordingly, Applicant failed to establish mitigation with respect to those relationships under AG ¶¶ 8(a), (b), or (c).

### **Guideline C: Foreign Preference**

The Foreign Preference guideline in effect at the time the SOR was issued included potentially disqualifying conditions relating to the exercise of rights or privileges of foreign citizenship, and possession or use of a foreign passport. The new Guideline C criteria, which came into effect on June 8, 2017, and control this national security eligibility determination, explicitly state that the exercise of any right or privilege of foreign citizenship (including holding a foreign passport or identity card) is not disqualifying without an objective showing that it is in conflict with U.S. national interests or the individual attempts to conceal such facts. Applicant renounced his Ethiopian citizenship and never renewed the expired Ethiopian passport with which he originally entered the United States. No Guideline C foreign preference security concerns are raised or supported by substantial evidence in this case.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(d):

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal and commendable results of his family situation. Applicant is a mature person, who gained U.S. residence as a refugee, and has been a naturalized citizen since 2010. His spouse and two minor children are U.S. citizens. All of his financial assets and professional connections are in the United States, and he has no plans to visit Ethiopia in the future although he made two extended visits there since becoming a U.S. citizen. There is no evidence or allegation that he has ever taken any action that could cause potential harm to the United States. However, his ongoing close relationships with his mother, two half-brothers, and parents-in-law who are resident citizens of Ethiopia, create significant and ongoing potential for pressure, coercion, exploitation or duress.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant did not meet his burden to mitigate the foreign influence security concerns raised by the facts of this case. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's 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 B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

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

DAVID M. WHITE  
Administrative Judge