



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



In the matter of:)
)
) ISCR Case No. 17-01149
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

05/08/2018

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations). Applicant mitigated the foreign influence concerns, but did not mitigate the financial concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 28, 2016. On May 18, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B (Foreign Influence), and Guideline F (Financial Considerations).¹

¹ The DOD CAF acted under Executive Order (Exec. Or.) 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 (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on June 3, 2017, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2017.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 13, 2017, and the hearing was convened on November 16, 2017. Government Exhibits (GE) 1 through 4 and Applicant's Exhibit (AE) A were admitted in evidence. Applicant testified. The record was held open for Applicant to submit additional exhibits. AE B, including several e-mails with attached credit reports and other documents, were submitted and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on November 30, 2017.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Ethiopia. (HE 1) The facts administratively noticed are summarized in the Findings of Fact, below.

Findings of Fact

Applicant is a 41-year-old aircraft mechanic employed by a defense contractor since 2015. This is his first application for a DOD security clearance. Applicant holds an associate's degree awarded in 2002 in Ethiopia, and attended various U.S. technical colleges. He earned an aviation maintenance technician certification in 2009. Applicant has two children, ages six and seven years old. Applicant returned to Ethiopia to visit in 2009, met his spouse in 2012, and married in 2014. Applicant's spouse is a citizen of Ethiopia, and has resided in the United States with Applicant and his U.S.-born children since 2016. She works in retail and she has not yet applied for U.S. citizenship.

Applicant was born in Ethiopia. He entered the United States in 2003 when he was 27 years old. He naturalized as a U.S. citizen in 2009. He began working in a gas station, but was then hired by an aviation company in December 2009, until he was laid-off in October 2015. He was unemployed from October 2014 to April 2015. He also worked as a taxi driver, line service technician, and Uber driver. He began his current job with a defense contractor in December 2015.

The SOR alleges under Guideline B, that Applicant's mother, father, two brothers two sisters, parents-in-law, and brother-in-law are citizens and residents of Ethiopia. It also alleges his uncle and friend are citizens and residents of Ethiopia, and they are employed by governmental agricultural offices. Finally, the SOR alleges Applicant sent about \$10,000 to his spouse in Ethiopia between 2012 and 2016, and another \$10,000 to his brother in Ethiopia between 2010 and 2016. The SOR alleges under Guideline F, that Applicant has over \$19,000 in delinquent debts. Applicant admitted all of the SOR allegations, and provided some explanations with his answer to the financial allegations.

Applicant's parents and one brother are farmers in Ethiopia. His other brother is a student. Another brother died while serving in the Ethiopian army in Somalia. Applicant's

sister is a teacher, and the other sister does not work outside the home. Both sisters are married. Applicant has contact with his parents and brother by phone about 7-12 times per year. His spouse has monthly contact with her family. Applicant's uncle is retired from the Ethiopian Agricultural Department, and Applicant has contact only about two to three times per year. He maintains contact with his in-laws about four times per year, and with his friend about twice per year, but not since 2015. In testimony, Applicant states he has sent about \$6,000 to his spouse and about \$5,000 to his brother in Ethiopia, usually during periods of famine or poor crop production to help with living expenses.

In reference to alleged SOR debts, Applicant provided evidence of resolution of \$3,415 and \$207 credit card debts alleged in SOR ¶¶ 2.b and 2.h. He also stated that he has entered into a payment plan on another credit card debt alleged in SOR ¶ 2.f, but did not provide evidence of payments made under the plan. He is disputing a collection account in SOR ¶ 1.g, but did not provide evidence of the dispute. The remaining SOR debts have not been paid or otherwise resolved. Of note, the credit report he provided lists two new collection accounts totaling over \$4,200 that are not listed in the SOR.

Applicant has a bank account with about \$1,700 and a retirement account worth about \$11,000. He borrowed about \$7,000 against the account for student loans. He owns a home valued at about \$145,000, with a mortgage of about \$126,000. He has not sought financial counseling.

Ethiopia

Ethiopia is a federal republic located in the Horn of Africa. It is predominantly an agricultural economy and remains largely impoverished. The government is engaged in fighting against terrorist groups in Somalia and within its borders. The government participates in African Union-led counterterrorism efforts as a troop-contributing country. Ethiopia has collaborated with the United States on regional security issues, participated in capacity-building training, and has partnered with the U.S. in airline security.

Al-Shabaab has vowed to carry out attacks in Ethiopia and two hotel explosions in 2017 have raised concerns about future violence. The largest city and capital Addis Ababa is considered a high-threat location for crime directed at or affecting official U.S. Government interests. Political instability in Ethiopia could present an attractive target for future attacks.

The United States State Department has issued travel warnings to U.S. citizens to avoid certain areas of Ethiopia because of the potential for civil unrest and arbitrary detention. Security forces have been responsible for hundreds of deaths in 2016 as a result of excessive use of force against protestors. In addition, there have been reports of arbitrary killings, disappearances, torture, harsh prison conditions, and other societal violence, including violence based on ethnicity and attacks against government security force members.

There has been no evidence presented that Ethiopia is engaged in intelligence collection against the United States or that U.S. citizens are targeted by the government.

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. The revised AG apply to this case.

“[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 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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 that 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.” 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 ¶ 1(d).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (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; 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.

Applicant has varying degrees of contact with foreign family members who are citizens and residents of Ethiopia. Ethiopia is a country threatened by violence, poverty, and civil rights abuses, with an active terrorist element. These conditions create a

heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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.; and

(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.

Applicant entered the United States in 2003 and became a U.S. citizen in 2009. His children are U.S. citizens and he owns a home in the United States. The financial assistance he gives his family has been limited and occurred during periods of drought and poor crop production. His parents and one brother are farmers. His other brother is a student. Applicant's sister is a teacher, and the other sister does not work outside the home. Both sisters are married. Applicant has limited contact with his uncle, who is now retired, and he has not spoken to his friend since 2015.

Applicant does not own property or financial resources outside of the U.S. He has savings and retirement assets in the U.S. valued at about \$13,000 and a home worth about \$145,000. He has been employed by his current employer since 2015.

I find it unlikely that Applicant's relationships with persons in Ethiopia, or their positions or activities, current or former, will place Applicant in a position of having to choose between those persons or interests, and the interests of the United States. Ethiopia is not known as a collector of U.S. intelligence and the government does not target U.S. citizens. Additionally, Applicant has such deep and longstanding relationships and loyalties to the United States that he can be expected to resolve any potential conflict of interest in favor of the United States, and that his familial relationships in Ethiopia are subordinate to his strong and long-lasting relationship to his family in the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred about \$19,000 in delinquent debts during periods of unemployment or under-employment. Most of the debts remain unresolved. The record evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant resolved credit card debts alleged in SOR ¶¶ 2.b and 2.h. He also stated that he has entered into a payment plan on another credit card debt alleged in SOR ¶ 2.f, but did not provide evidence of payments made under the plan. He is disputing a collection account in SOR ¶ 1.g, but did not provide evidence of the dispute. The remaining SOR debts have not been paid or otherwise resolved. His most recent credit report lists two debts totaling over \$4,200 that are not listed in the SOR.

I am unable to find that he acted responsibly under the circumstances or that he made good-faith efforts to resolve the remaining legitimate debts. Although Applicant had periods of unemployment and underemployment, he has been employed since 2015 and had sufficient time to negotiate payments or find other means to address his debts. Applicant exhibited financial irresponsibility that has not been mitigated. His actions continue to cast doubt on his current reliability, trustworthiness, and good judgment. I have insufficient evidence to determine that he has control over his finances and can meet future financial obligations when due. No mitigating conditions fully apply.

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 relevant 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. I have incorporated my comments under Guidelines B and F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's close and continuing ties to the United States. I find that his devotion to the United States, as evidenced by his education, work history, and ties to his family in the U.S. mitigates any concerns raised by his foreign contacts. However, his unresolved debts continue to raise questions about his financial status and overall

financial responsibility. He has provided insufficient evidence that he has a plan to address his debts and that his finances are stable.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance based on financial considerations, but he has mitigated the foreign influence 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:	For Applicant
Subparagraphs 1.a-1.f:	For Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraphs 2.a; 2.c – 2.g:	Against Applicant
Subparagraphs 2.b and 2.h:	For 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.

Gregg A. Cervi
Administrative Judge