DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 17-01652
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.

02/26/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated foreign influence security concerns relating to his connections to Somalia because his connections to the United States are much greater than his connections to Somalia. Applicant provided false information to the U.S. Citizenship and Immigration Services (USCIS) to obtain residence in the United States. He is worried about losing his U.S. citizenship. Personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On January 8, 2016, Applicant completed and signed a Questionnaire for National Security Position (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On July 11, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the adjudicative guidelines (AGs), Appendix A to Security Executive Agent Directive 4, effective on June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a

security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under the foreign influence and personal conduct guidelines.

On August 22, 2017, Applicant responded to the SOR and requested a hearing. HE 3. On October 26, 2017, Department Counsel was ready to proceed. On October 30, 2017, the case was assigned to me. On November 7, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 28, 2017. HE 1. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered 3 exhibits; Applicant offered 19 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 13-16; GE 1-3; Applicant Exhibit (AE) A-R. On December 5, 2017, DOHA received a copy of the transcript of the hearing.

Procedural Ruling

Department Counsel and Applicant offered summaries for administrative notice discussing foreign influence security concerns raised by Applicant's connections to Somalia, Saudi Arabia, and Sudan. Tr. 14; HE 4; AE P; AE Q; AE R. Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. *See* Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). There were no objections to me taking administrative notice of the proffered documents. Tr. 14. The requests for administrative notice are granted. The "Somalia" section is derived from Department Counsel and Applicant's administrative notice requests. HE 4; AE P. The "Saudi Arabia," and "Sudan" administrative notice requests were carefully considered; however, Applicant's connections to those two counties are so attenuated that discussions of those two countries in this decision are not warranted. His half-brother who had been living in Saudi Arabia moved back to Somalia, and he had no other connections to Saudi Arabia. *See* SOR ¶ 2.e. His cousin living in Sudan may no longer live there, and he may not currently occupy a Somali Government position. *See* SOR ¶ 2.f. He had no other connections to Sudan.

Findings of Fact[1]

The SOR alleges Applicant falsified his application for political asylum in the United States in about November 1999 when he falsely claimed he was a citizen and

[1] The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

resident of Somalia and feared for his life (¶ 1.a). The SOR also alleges: Applicant's father (¶ 2.a), two half-brothers (¶ 2.c), and one half-sister (¶ 2.c) are citizens and residents of Somalia; He provided financial support to his father (¶ 2.b) and his half-brother (¶ 2.d) who are citizens and residents of Somalia; One of Applicant's half-brothers is a citizen of Somalia and a resident of Saudi Arabia (¶ 2.e); and his cousin is a citizen of Canada, resides in Sudan, and has connections to the Somali Government (¶ 2.f). Applicant admitted the allegations in SOR ¶¶ 2.a, 2.b, 2.c, and 2.f. He partially admitted the allegations in SOR ¶¶ 1.a, 2.d, and 2.e. He also provided some mitigating information. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 52-year-old employee of a federal government agency, and a security clearance is not required for his current employment. Tr. 19; GE 1. He has never held a security clearance. Tr. 19. His resume provides details of his employment history. AE C. *See also* GE 1; GE 2; GE 3. He has received training and certifications establishing his ability to perform interpreter duties. AE I. He seeks employment from a defense contractor as a linguist. Tr. 19.

Applicant received a bachelor's degree in mathematics and biology from a university in Somalia. Tr. 17. He received excellent grades from the university. AE E. He was married from 1989 to 2003, and from 2007 to 2015. Tr. 17-18. His seven children are ages 9 to 27. Tr. 18. One of his children was born in Somalia; five of his children were born in Canada; and one child was born in the United States. Tr. 18, 50; GE 1; GE 2; AE B.

In 1990, Applicant moved from Somalia to Canada, and in 1994, he became a Canadian citizen. Tr. 49-50. He lived in Canada from 1990 to 1999, when he moved to the United States. Tr. 49. He did not seek political asylum in Canada. Tr. 50. After applying for residence in the United States in 1999, he returned to Canada until 2003 because he wanted to be with his family. He has lived in the United States since 2003. Tr. 20. Applicant emigrated from Canada to the United States to obtain employment. Tr. 20.

In 2009, Applicant became a permanent U.S. resident, and in 2014, Applicant became a U.S. citizen. Tr. 20, 53; AE H. Applicant has not served in the military of any country. Tr. 21. Applicant has not traveled to any country in Africa or the Middle East in the last seven years. GE 1. Applicant promised to limit his future contacts with foreign citizens. AE D.

In 1988, Applicant's mother passed away. Tr. 38. Applicant's father is a citizen and resident of Somalia. Tr. 27. His father is in his 80s and receives financial support from his children who live in Europe and the United States. Tr. 28. Since 2003, Applicant has provided about $2,500 to his father, mostly in payments from about $40 to $200 once or twice a year. Tr. 29-30, 45. In 2017, he sent his father $750. Tr. 45. He communicates with his father every year or two, and he cannot remember the last time he communicated with his father. Tr. 30.

Applicant has two half-brothers and two half-sisters, and they are citizens and residents of Somalia. Tr. 31, 48. He does not have any siblings living in Somalia. He rarely communicates with his half-siblings in Somalia. Tr. 32. He has not talked to his half-brothers for three or four years, and he most recently communicated with his half-sister in 2015. Tr. 34-35. Around 2014, Applicant gave $700 to one of his half-brothers living in Somalia to provide to his father. Tr. 36. He does not have any half-brothers in Saudi Arabia because the one who lived in Saudi Arabia moved back to Somalia. Tr. 33. From 2003 to 2016, Applicant sent $16,300 to family living in Somalia and Canada. Tr. 46-47; GE 3.

Applicant's cousin is or was an official in the Somali Government. Tr. 38. Applicant was unsure whether his cousin was still an official in the Somali Government. Tr. 38. He most recently communicated with his cousin in December 2016 when his cousin came to the United States. Tr. 38-39, 61. His cousin sponsored Applicant's immigration to and residency in Canada in the 1990s. Tr. 39-40, 60. His cousin has spent many years in the United States.

Personal Conduct

In 1999, Applicant entered the United States from Canada. Tr. 51. After he was in the United States for about a month, he filed a form with the USCIS falsely stating he was not a citizen and resident of Canada. Tr. 21, 52. He claimed he was a citizen and resident of Somalia, and he was in danger if he remained in Somalia. Tr. 21, 52; SOR ¶ 1.a; GE 2; GE 3; SOR response. He filed for residency in the United States based on political asylum. Tr. 22. He claimed he did it on a whim, and he did not carefully consider what he was doing. Tr. 22. In 2000, he received political asylum. Tr. 23, 53.

Applicant returned to Canada after 2000 to be with his children. Tr. 23. In 2003, he returned to the United States, and he resumed his U.S. residency. Tr. 24. He acknowledged that he falsified the USCIS documentation to obtain permanent residency in the United States. Tr. 24. He denied that he had ever falsified any other government documents. Tr. 25. On May 28, 2015, he disclosed the falsification of his request for asylum to the FBI. Tr. 26, 58-59. He did not receive the employment he sought in 2015, because of the immigration falsification. Tr. 59. He disclosed his false application for U.S. residence on his January 8, 2016 SCA. He said he regretted submitting the false documentation to the USCIS, and he said that he is very sorry. Tr. 24, 44.

The current version of USCIS Form N-400, Application for Naturalization, asks at least four questions about past conduct: Part 12, section 22 asks, "Have you **EVER** committed, assisted in committing, or attempted to commit, a crime or offense for which you were **NOT** arrested?"; Part 12, section 30I asks, "Have you **EVER** made any misrepresentation to obtain any public benefit in the United States?"; Part 12, section 31 asks, "Have you **EVER** given **any** U.S. Government officials any information or documentation that was false, fraudulent, or misleading?"; and Part 12, section 32, "Have you **EVER** lied to any U.S. Government officials to gain entry or admission into the United States or to gain immigration benefits while in the United States?" HE 5

(emphasis in original).[2] The signature on USCIS Form N-400 is made under oath or affirmation.

In 2009, Applicant completed documentation for the USCIS for permanent residency, and around 2014, he completed additional documentation for the USCIS when he applied for naturalization. Tr. 54. He did not provide any of the immigration documentation that he submitted to the USCIS. He did not disclose to the USCIS that his asylum request in 1999 was false. Tr. 54. Applicant is worried that the USCIS will conclude that he fraudulently obtained his U.S. citizenship and will revoke his U.S. citizenship. Tr. 63.

Character Evidence

Nine character letters laud Applicant's loyalty, diligence, dedication, and professionalism. AE A; AE J. None of his character letters mention an awareness that he fraudulently obtained permanent residence in the United States or U.S. citizenship. His performance evaluations show satisfactory to excellent work and contributions to his employer. AE K; AE L.

Somalia

Somalia was established as a federal parliamentary republic in 2012. Somalia has made strides towards democracy and compliance with the rule of law since 2012. Somalia has several important human rights enshrined in the law. The U.S. State Department has warned U.S. citizens to avoid travel to Somalia because of widespread terrorist and criminal activity. Al-Shabaab is associated with al Qaida and has engaged in numerous bombings and murders targeting the Somali Government, civilians, and foreigners. Hundreds of al-Shabaab fighters have attacked military bases. Somali towns have been occupied by al-Shabaab. Somali Government security forces have countered in some instances with torture, murder, and other illegal actions. Human rights violations have occurred. There is no evidence that Somali terrorists use coercion to obtain U.S. classified information from U.S citizens or residents. The Somali Government has implemented changes to reduce and curtail terrorism. The United States and the Somali Government are allies in the war against terrorism, and the United States has employed drone strikes in Somalia to counter terrorists.[3]

[2] I take administrative notice of the content of the current U.S. Citizenship and Immigration Services (USCIS) Form N-400. HE 5. The current USCIS Form N-400 went into effect on December 23, 2016, after Applicant filed for citizenship. Completion of a USCIS Form I-485 is necessary to apply for permanent residency.

[3] The magnitude of violence in Somalia may be escalating. *See* Jason Burke, Africa correspondent for The Guardian, "Mogadishu truck bomb: 500 casualties in Somalia's worst terrorist attack," (Oct. 16, 2017), https://www.theguardian.com/world/2017/oct/15/truck-bomb-mogadishu-kills-people-somalia (stating more than 300 deaths resulted from a single truck bomb).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance 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, these guidelines are applied 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 all available, reliable information about the person, past and present, favorable and unfavorable.

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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. *See also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication that an applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

> 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 has two conditions that could raise a security concern and may be disqualifying 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 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.

Applicant does not frequently communicate[4] with any citizens or residents of Somalia, Saudi Arabia, or the Sudan. Applicant left Somalia 27 years ago, and he has elected not to communicate with his relatives in Somalia for the previous two years and

[4] The Appeal Board has concluded that contact every two months or more frequently constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). *See also* ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

in the future. Concerns alleged in the SOR pertaining to Saudi Arabia and the Sudan are not established because Applicant's half-brother who had been residing in Saudi Arabia moved back to Somalia, and there is insufficient evidence to establish his cousin continues to reside in or have contacts with Sudan.

There are widely-documented safety issues for residents of Somalia because of terrorists and insurgents. The mere possession of close family ties with one or more family members living in Somalia is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in 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, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Somalia with the United States, and the situation in Somalia places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his father living in Somalia does not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Somalia.

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).

While there is no evidence that intelligence operatives or terrorists from Somalia seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Somalia has an enormous problem with terrorism. Applicant's relationship with father who is living in Somalia creates a potential conflict of interest because terrorists could place pressure on his family living in Somalia

in an effort to cause Applicant to compromise classified information. This relationship creates "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Applicant provides funds to his father and those funds are crucial to his father's well being. Department Counsel produced substantial evidence of Applicant's contacts with his father in Somalia and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) are established with respect to his father; however, they are not established with respect to his other relatives living in Somalia. Further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

> (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 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, 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;
>
> (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;
>
> (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;
>
> (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and
>
> (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

> Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance

> of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan*, *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a), 8(b), and 8(c) apply. Applicant does not have frequent communications with his father. His financial support for his father shows the requisite connection to establish a security concern. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." In 2003, Applicant returned to reside in the United States, and in 2014, he became a U.S. citizen. One of his children was born in the United States and resides in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his father, who is a citizen and resident of Somalia. Applicant's father is vulnerable to terrorists in Somalia; however, it is important to be mindful of the United States' investment in counterterrorism efforts in Somalia and Somalia's increasing efforts in democracy and compliance with the rule of law.

In sum, Applicant's connections to his father living in Somalia are less significant than his connections to the United States. His employment in support of the U.S. Government, family living in the United States, and U.S. citizenship are important factors weighing towards mitigation of security concerns. His connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (1) untrustworthy or unreliable behavior . . . ; (3) a pattern of . . . rule violations; and
>
> (e) personal conduct . . . that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

In 1999, Applicant made a false statement to USCIS when he did not disclose that he was a citizen and resident of Canada. He falsely claimed he was a resident of Somalia, and he needed to emigrate from Somalia because of the dangers in Somalia. In 2000, the USCIS relied on his representations and granted him asylum in the United States. AG ¶¶ 16(d) and 16(e) are established.

AG ¶ 17 lists four conditions that could mitigate personal conduct security concerns:

> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
>
> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
>
> (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
>
> (f) the information was unsubstantiated or from a source of questionable reliability; and

None of the mitigating conditions are fully established. In 1999, Applicant made a false statement to the USCIS to obtain residence in the United States. In 2000, the U.S. Government approved his request, and he received the benefit of U.S. residency, as a

result of his false statement. When he applied for permanent residency in 1999, and when he applied for citizenship around 2014, he had an opportunity to disclose accurate information about his residence and citizenship in Canada and to disavow his previous false statement about Somalia. He decided not to disclose that the statements supporting asylum were false.[5] He receives some credit under AG ¶¶ 17(d) and 17(e) for disclosing his history of lying on May 28, 2015, to the FBI and on his January 8, 2016 SCA.

Applicant is concerned that he is vulnerable to loss of his U.S. citizenship. Congress created two alternative approaches to denaturalization relating to making false statements during the naturalization process, one civil and one criminal. The denaturalization procedure established under 8 U.S.C. § 1451(a) is civil and equitable in nature, initiated by filing a petition in the district court where the citizen resides. Title 8 U.S.C. § 1451(e) is criminal in nature and makes denaturalization mandatory where the citizen is found guilty of violating 8 U.S.C. § 1425. *See United States v. Maslenjak*, 821 F.3d 675 (6th Cir. 2016) (discussing denaturalization), rev*'d on other grounds*, *Maslenjak v. United States*, 137 S. Ct. 1918, 2017 U.S. LEXIS 4042 (U.S., June 22, 2017) (criminal conviction under 8 U.S.C. § 1451(e) requires proof of causal connection between false statement and decision to grant naturalization). Title 18 U.S.C. § 1425(a), makes it a crime to knowingly procure, contrary to law, the naturalization of any person.[6] A false statement to the USCIS to obtain permanent residency or citizenship may also violate 18 U.S.C. § 1001. Title 18 U.S.C. § 1015(a) makes it a crime to make any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registration of aliens. I specifically do not conclude that Applicant committed any criminal conduct, and I have not assessed his case under Guideline J. *See* note 5, *supra*. Personal conduct security concerns are not mitigated.

[5] Applicant's SOR does not allege: (1) any false statements after 1999; (2) his false statements may constitute criminal conduct under 18 U.S.C. §§ 1001 and 1015(a) as well as under 8 U.S.C. § 1425; and (3) his false statements could result in denaturalization as well as confinement and fines. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

> (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). *See also* ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These three non-SOR allegations will not be considered criminal conduct under Guideline J, and consideration will be limited to the five purposes listed above.

[6] Because a certificate of citizenship illegally obtained is *void ab initio* there is no statute of limitations applicable to denaturalization proceedings (8 U.S.C. § 1451). *United States v. Walus*, 453 F. Supp 699 (N.D. Ill. 1978), *rev'd on other grounds*, 616 F.2d 283 (7th Cir. 1980).

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(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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines B and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 52-year-old employee of a federal government agency. He has received training and certifications establishing his ability to perform interpreter duties. He seeks employment for a defense contractor as a linguist. Applicant received a bachelor's degree in mathematics and biology from a university in Somalia. One of his children was born in Somalia; five of his children were born in Canada; and one child was born in the United States.

Applicant provides financial support to his father, who is a citizen and resident of Somalia. In 1990, Applicant moved from Somalia to Canada, and in 1994, he became a Canadian citizen. He lived in Canada from 1990 to 1999, when he applied for residency in the United States. He did not seek political asylum in Canada. In 2009, Applicant became a permanent U.S. resident, and in 2014, Applicant became a U.S. citizen. Applicant emigrated from Canada to the United States to obtain employment. He has lived in the United States since 2003. Applicant has not traveled to any country in Africa or the Middle East in the last seven years. GE 1. Applicant's connections to the United States are much greater than his connections to Somalia.

A Guideline B decision concerning Somalia must take into consideration the geopolitical situation and dangers there.[7] Somalia is a dangerous place because of violence from terrorists and insurgents. These entities continue to threaten the Somalia Government, the interests of the United States, and those who cooperate and assist the United States. The Somalia Government does not fully comply with the rule of law or

[7] *See* ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

protect civil liberties in many instances. The United States and Somalia Governments are allies in the war on terrorism.

Applicant made a false statement to obtain residency in the United States in 1999. Around 2009, he applied for permanent residency and around 2014, he applied for naturalization. He had opportunities in 2009 and 2014 to disclose his false statement in 1999, and he did not do so. This case turns on his original false statement in 1999, and his failure to affirmatively disclose to USCIS that he was dishonest about seeking asylum in 1999 thereafter. Consideration of the non-SOR allegations is limited. *See* note 5, *supra*. As AG ¶ 15 explains, "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Applicant is concerned about the loss of his U.S. citizenship because of his false statement to the USCIS.

I have carefully applied the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are mitigated; however, personal conduct security concerns are not mitigated.

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

_____
Mark Harvey
Administrative Judge