



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-01758  
 )  
 )  
Applicant for Security Clearance )

**Appearances**

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

11/27/2017  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 22, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 14, 2017, and requested a hearing before an administrative judge. The case was assigned to me on August 21, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2017. I convened the hearing as scheduled on September 19, 2017. The Government offered

Exhibits (GE) 1 through 3. Applicant testified and offered Applicant Exhibit (AE) A. There were no objections to any exhibits offered and they were admitted into evidence. DOHA received the hearing transcript on September 27, 2017.

### **Procedural Issues**

On August 29, 2017, the Government amended SOR ¶ 1.a to add his mother and half-siblings as residents and citizens of Somalia. Applicant admitted the amended allegation and had no objection.<sup>2</sup>

### **Request for Administrative Notice**

Department Counsel submitted HE II, a written request that I take administrative notice of certain facts about Somalia. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.<sup>3</sup> The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted the allegations in the SOR and amended SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 57 years old. He was born in Somalia. He immigrated to the United States in 1983 and became a naturalized citizen in 1989. He married in 1983 and divorced in 1988. He had no children from the marriage. He remarried in 1990 and divorced in 2004. He has three children from that marriage, ages 24, 19, and 16 years old. All were born in the United States. He remarried in 2008 and divorced in 2015. He has no children from this marriage.<sup>4</sup>

Applicant's parents were born in Somalia and resided there while Applicant was growing up. After they divorced, he lived with his father and his sisters lived with their mother. His father was abusive, and Applicant ran away. He struggled living on his own, but put himself through school by being a tailor. He graduated and successfully passed tests to be an elementary and middle school teacher.<sup>5</sup>

Applicant's father remarried after his divorce. Applicant's father had six children with his wife, a Somali citizen and resident. His father worked in a blue-collar position for the Somali government. His father became sick and asked Applicant to help support

---

<sup>2</sup> Hearing Exhibit (HE) I is the amended SOR.

<sup>3</sup> HE III are the source documents.

<sup>4</sup> Tr. 30-33; GE 1.

<sup>5</sup> Tr. 22, 40-42.

his half-siblings and to be responsible for them. Applicant could not turn them away with no assistance. There were no other family members to help them. Applicant has been sending them money since his father's death in 2008. The children are ages 23, 21, 20, 17, and twins age 15 years old.<sup>6</sup>

Applicant testified that he contacts the children by telephone and tells them to do the right thing. He gives them advice and encourages them to learn English. He provided them financial support of about \$360 monthly. On his Counterintelligence-Focused Security Screening Questionnaire, he disclosed that he estimated he provided his half-siblings a total of about \$34,560 in the past. They live in his father's house. He has never met or seen them, but talks with them monthly. They are in different schools. Applicant was the sole source of financial support for them until last month. He recently refused to provide additional support when one wanted to open a store. He told them he could not financially support them anymore.<sup>7</sup>

Applicant's mother is a resident of Somalia. She came to the United States in 1993 to help care for Applicant's children. In 2013, she became a U.S. citizen. She lived with Applicant while she was in the United States. She moved back to Somalia in 2015 because she missed living there. She lives there with a roommate. Applicant speaks with her monthly and sends her about \$500 a month. If she needs more, Applicant will send more. Applicant is her sole source of support. During Applicant's March 2016 background interview with a government investigator, he disclosed that his mother changed her name in 2013 because she feared her birth name might put her in danger when she returned to Somalia. Applicant indicated that she might return to the United States to live in the future. She owns a small lot of land in Somalia. She is attempting to sell it. Applicant returned to Somalia twice since he moved to the United States, once when he accompanied his mother when she moved back there. The second time was when his father was ill. He used his U.S. passport to travel.<sup>8</sup>

Applicant has two sisters who are citizens and residents of Somalia. They are both married to Somali citizens. Their husbands have more than one wife. They each have ten children. Applicant does not associate with the husbands. One sister owns a small store where she sells milk and cheese. He testified that he rarely contacts his sisters. He disclosed on his security clearance application (SCA) that he had quarterly contact with one of his sisters and annual contact with the other.<sup>9</sup>

Applicant has no assets in Somalia or the United States. He wants to give back to the United States because of the opportunities he has been afforded. Applicant provided a character letter from a friend, who was a former student of Applicant's in Somalia in

---

<sup>6</sup> Tr. 19-20, 23, 27-28, 38, 46.

<sup>7</sup> Tr. 28-30, 45-46; GE 3.

<sup>8</sup> Tr. 20-22, 26-27, 34, 36-40, 42-44, 46-49; GE 2.

<sup>9</sup> Tr. 23-26, 44-45; GE 1.

1979. He now lives in the United States. He noted that Applicant is a dedicated and hard-working American.<sup>10</sup>

## **Somalia<sup>11</sup>**

Somalia is a federal parliamentary republic established in 2012, after years of factional fighting and anarchy following the 1991 collapse of the authoritarian socialist's regime that had been in place since a 1969 coup. The United States formally recognized the Federal Government of Somalia in 2013.

The U.S. Department of State warns U.S. citizens to avoid travel to Somalia because of widespread terrorism and criminal activity. Terrorist groups operate with impunity throughout large parts of the country, including Mogadishu, and attack civilian, military and government targets and are responsible for kidnappings, bombings, murder, and illegal roadblocks. Other violent incidents are also common throughout Somalia. There is no U.S. embassy presence in Somalia.

The U.S. Department of State has assessed Mogadishu as being a critical threat location for terrorist activity directed at or affecting official U.S. Government interests. Pervasive and violent crime is an extension of the general state of insecurity in Somalia.

Terrorist groups impose their own interpretation of Islamic law and practice on other Muslims in Somalia, targeting and killing federal and government officials as non-Muslims or apostates. They harass and threaten members of secular and faith-based humanitarian organizations, accusing them of seeking to convert Somalis to Christianity, and threaten to execute anyone suspected of converting to Christianity.

Somalia remained a safe haven for terrorists in 2016, due to the relative freedom of movement they utilize to obtain resources and funds, recruit fighters, and plan and mount operations in Somalia and neighboring countries. Somalia's porous borders contribute to the regional insecurity. It does not have a central or shared terrorist screening watch, and does not possess biographic or biometric screening capabilities at points of entry.

Numerous human rights violations are reported, including executions without due process. The U.S. Department of State reported that in 2016 impunity was the norm. Civilian authorities did not maintain effective control of security forces and government authorities took minimal steps to prosecute and punish official who committed violations, particularly military and police officials accused of rape, killings, clan violence, and extortion of civilian.

Human rights abuses included disappearance, torture and other cruel, inhuman, or degrading treatment or punishment; harsh prison conditions; arbitrary or politically

---

<sup>10</sup> Tr. 17, 35; AE A.

<sup>11</sup> HE II, III.

motivated arrests and detention; denial of a fair trial; use of child soldiers; restrictions on freedom of speech and press, assembly, religion and movement; corruption; and trafficking in persons.

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to 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 that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant

concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B: Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following 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; 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.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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.”<sup>12</sup>

The United States has serious concerns about terrorist activities in Somalia. The U.S. Department of State has assessed Mogadishu as being a critical threat location for terrorist activity directed at or affecting official U.S. Government interests. Pervasive and violent crime is an extension of the general state of insecurity in Somalia. U.S. citizens are warned to avoid travel to Somalia because of widespread terrorism and criminal activity. Terrorist groups operate with impunity throughout large parts of the country, including Mogadishu, and attack civilian, military and government targets. Numerous human rights violations are reported, including executions without due process. Civilian authorities do not maintain effective control of security forces, and government authorities take minimal steps to prosecute and punish official who committed violations, particularly military and police officials accused of rape, killings, clan violence, and extortion of civilian.

Applicant’s mother is a citizen of the United States residing in Somalia. His two sisters and six half-siblings are citizens and residents of Somalia. Applicant accompanied his mother to Somalia so she could reestablish her residence there. She was concerned for her safety and changed her name. Applicant is her sole source of financial support. After his father died, Applicant fulfilled his father’s wishes and has financially supported his half-siblings and assumed a parental role. Applicant’s contacts with his mother, siblings, and half-siblings, residing in Somalia, creates a heightened risk, a potential foreign influence concern, and a potential conflict of interest. AG ¶¶ 7(a) and 7(b) applies

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

- (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 and 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 interests in favor of the U.S. interests; and

---

<sup>12</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

(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's mother is a U.S. citizen residing in Somalia. He has a close relationship with her. She lived with him in the United States for twenty years. He traveled with her to Somalia to help her relocate. He is her sole means of financial support. He sends her money each month. Although she is a U.S. citizen, her residence at this time is Somalia. She owns land there. She hopes to sell it. She changed her name because she was concerned about her safety. Applicant maintains regular contact with his half-siblings and provided them financial support until recently. He took on a parental role toward his half-siblings, fulfilling his father's wishes that he be responsible for them after he died. His maintains regular contact with one of his sisters. Applicant's contact with his family is not casual and infrequent. AG ¶ 8(c) does not apply.

I have considered Applicant's close relationship with his mother and his parental role relationship with his half-siblings. Somalia is an unsafe place for those residing there, and especially for U.S. citizens. Terrorism and human rights abuses for people living there are rampant. I cannot find that it is unlikely that Applicant would be placed in a position of having to choose between his mother, siblings, and his half-siblings, and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has been a U.S. citizen since 1988. He has returned to Somalia twice since becoming a citizen, but both times related to his family. He is a devoted son. His mother lived with him in the United States and when she wanted to return to Somalia to live, he took her back. When his father was ill, Applicant went to Somalia to be with him. His dying father entrusted Applicant to be responsible for his half-siblings, a role that Applicant assumed. He maintains a closer relationship with one sister over the other, through monthly contact. His relationship with his family in Somalia is ongoing and not insignificant and creates a potential conflict of interest due to his loyalty them. AG ¶ 8(b) does not 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 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), 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 57 years old and has been a naturalized U.S. citizen since 1988. He has strong and loyal family ties with relatives in Somalia. While those connections are commendable, they create a serious heightened risk and raise security concerns that are unmitigated. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate them under Guideline B, foreign influence.

### **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:                      AGAINST APPLICANT

Subparagraphs 1.a-1.b:                      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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge