



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



In the matter of:

ISCR Case No. 17-03973

Applicant for Security Clearance

**Appearances**

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

10/12/2018

**Decision**

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate security concerns raised by his foreign family members. Eligibility for access to classified information is denied.

**History of Case**

Applicant submitted a security clearance application (SCA) on January 18, 2017. On December 27, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline B. Applicant answered the SOR on February 13, 2018, and requested a hearing before an administrative judge.

I was assigned to the case on May 14, 2018. On May 15, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 12, 2018, and I issued an order to both parties to produce their documentary evidence by June 1, 2018. Department Counsel submitted her documentation as requested, and Applicant did not submit documentation. I convened the hearing as scheduled. Government's Exhibits (GE) 1 through 3 and Applicant's Exhibits (AE) A and B, were admitted without objection. Applicant also testified. I received the completed transcript (Tr.) on June 20, 2018, and the record closed.

## **Administrative Notice**

I took administrative notice of facts concerning Ethiopia. Those facts are set forth in the Government's Request for Administrative Notice for Ethiopia, marked as GE 3. These documents are included in the record. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

## **Findings of Fact**

Applicant is 49 years old, and he was born in Ethiopia. In 1990, he fled the communists in Ethiopia and entered the United States. (Tr. 19) He was naturalized in 1996. Applicant received his associate's degree in 2002. (Tr. 11) He has been unemployed since March. He is sponsored by a defense contractor and requires a clearance for this position. This is his first security clearance application. (Tr. 9)

Applicant has married three times in Ethiopia to Ethiopian citizens. He married his first wife in 1990, and they divorced in 2001. He married his second wife in 2005, and they had a son in 2006. His second wife and son moved to the U.S. in 2008, and they subsequently divorced in 2014. (Tr. 22-23) Applicant has been married to his third wife since June 2015, and they have two children who are four and six. His third wife is an Ethiopian citizen and resident. Their children are citizens of the United States, but have resided their entire lives in Ethiopia. (Tr. 40)

Applicant returned to Ethiopia in July 2003 to take care of his mother.<sup>1</sup> Between July 2003 and October 2016, Applicant worked as an administrator at an Ethiopian hospital. (GE 2 at 2) He lived in the United States from October 2016 until March 2017, and was unemployed during this period. In March 2017, Applicant returned to Ethiopia and lived with his wife, children, and mother until March 2018, when he returned to the United States due to the security clearance process. He worked at an Ethiopian hospital between March 2017 and March 2018. He has been unemployed since March 2018. (Tr. 11-13, 21, 34-36)

Applicant is in the process of relocating his wife and children to the United States. In October 2016, he applied for I-130 status with U.S. Immigration. At the hearing, Applicant submitted documentation demonstrating his wife's visa application was approved in May 2018. She is waiting for an interview in Ethiopia before she can move to the United States. They communicate every other day via phone applications. (Tr. 16-18, 36-38; AE A; AE B).

Applicant's mother is a green card holder, but returned to Ethiopia in 2003 due to her advancing age. He communicates with her monthly. His wife and children reside with her and they are all supported financially by his sister. (Tr. 20-21, 30, 36) His sister and

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<sup>1</sup> Applicant's mother lived in the United States from 1992 until 2003. (Tr. 38)

her family live in United States, he currently lives with them, and they have been financially supporting him since approximately October 2016. (Tr. 28)

Applicant's two brothers are citizens of the United States. One of his brothers is a physician who works and resides in Ethiopia between three to six months each year.<sup>2</sup> This brother also provides financial support to Applicant, their mother, and Applicant's wife and children. (Tr. 31) Applicant's wife's parents and six siblings are all citizens and residents of Ethiopia. He communicates with his parents-in-law every three months. (Tr. 25-27, 37, 39-40)

None of Applicant's family members are associated with the Ethiopian government or military. (Tr. 27-28) He has no financial assets, including a bank account, in the United States or Ethiopia. He does not provide child support to his son who resides in the United States. (Tr. 28, 32, 39)

## **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, including al-Shabaab, in Somalia and within its borders. 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 terrorist-activity and 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.

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

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<sup>2</sup> Applicant's brother, the physician, sponsored Applicant's green card and citizenship. (Tr. 38)

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(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."

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

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.

The guideline includes 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 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.

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, that 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).

Applicant has ongoing familial connections with his wife, children, mother, and his wife's relatives. These relationships create a heightened risk of foreign pressure or attempted exploitation because of the risk of terrorism. The evidence and Applicant's admissions are sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The guideline includes several conditions that could mitigate security concerns under AG ¶ 8. The following are potentially applicable in this case:

- (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; 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.

Although none of Applicant's foreign contacts are employed by the Ethiopian government, the instability and risk of terrorism in Ethiopia present an unacceptable risk that Applicant may be placed in a position of having to choose between the interests of a foreign individual, group, or government and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant's ties to the United States are not substantial. During the past fifteen years, he has lived and worked primarily in Ethiopia. He does not own property or maintain a bank account in the United States. Nor does he provide child support to his son who resides in the United States. Applicant maintains close relationships with his mother, wife, and children in Ethiopia, to whom he is bound by affection or obligation. His wife's parents and six siblings are all citizens and residents of Ethiopia. He has not overcome the presumption of a non-casual relationship with these immediate family members. Although he is in the process of applying for a green card for his wife, at the time of the hearing, she was still a citizen and resident of Ethiopia. AG ¶¶ 8(b) and 8(c) are not applicable in this case.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the security concerns at issue. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

### **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
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Subparagraph 1.a.-1.f.:	Against Applicant
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### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge