



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 14-04918
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

April 27, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On February 13, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on February 26, 2015, and he requested that his case be decided on the written record in lieu of a hearing. (Item 4.) On November 17, 2015, Department Counsel issued the Department’s written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on December 25, 2015. Applicant submitted an additional document, which has been identified and entered into evidence as Exhibit A. The case was assigned to this Administrative Judge on February 19, 2016.

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Request for Administrative Notice**

Department Counsel requested in the FORM that I take administrative notice of certain facts relating to the country of Somalia that were reviewed in the FORM. The documents upon which the facts were based have been referred to in the FORM as source documents I through IV. The brief summary of the facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including the SOR, Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 44 years old, and he was born in Somalia. He lived in Kenya for some time, and then came to the United States in 1998. Applicant became a naturalized United States citizen in December 2007. Applicant is married, and his spouse, who was born in Somalia, is now a naturalized United States citizen. (Item 5.)

Applicant is employed by a DoD contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Guideline B, Foreign Influence**

The SOR lists five allegations, (1.a. through 1.e.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR.

1.a. The SOR states that Applicant's mother is a citizen and resident of Somalia. Applicant admitted this allegation in his RSOR. He wrote that his mother, whose health is continuing to deteriorate, depends on him for support, and the minimum support that he provides to her helps her to survive. (Item 4.) In Applicant's Electronic Questionnaires for Investigations Processing (e-QIP), signed by him on September 16, 2013, Applicant wrote that he has contact with his mother on a monthly basis. (Item 5.)

Applicant completed and signed interrogatories on August 23, 2014, that were propounded to him by the DoD. (Item 6.) On the interrogatories Applicant answered questions confirming that the report of investigation (ROI) provided to him by an authorized investigator for the DoD, and based on an interview that had been held on October 17, 2013, were accurate and that he adopted the investigator's summaries as accurately reflecting his interviews.

On the ROI, Applicant indicated that he and his mother had monthly contact by telephone, and that she is a housewife, who had never been employed outside of the home. His mother has no affiliation with any foreign government. (Item 6.)

1.b. The SOR states that Applicant's brother is a citizen and resident of Somalia. Applicant admitted this allegation in his RSOR. (Item 4.) He wrote that it has been a few years since he had contact with him, and he does not provide support to him. (Item 4.) In his e-Qip, Applicant wrote that he has contact with his brother on a quarterly basis. (Item 5.)

On the ROI, Applicant indicated that he and his brother have quarterly contact by telephone, and that he is a self-employed salesman. His brother has no affiliation with any foreign government. (Item 6.)

1.c. The SOR states that Applicant's sister is a citizen and resident of Somalia. Applicant admitted this allegation in his RSOR. He wrote that it has been a few years since he had contact with her, and he does not provide support to her. (Item 4.)

On the ROI, Applicant indicated that he and his sister have no contact, and that she is unemployed. His sister has no affiliation with any foreign government. (Item 6.)

1.d. The SOR states that Applicant's stepbrother is a citizen and resident of Somalia. Applicant admitted this allegation in his RSOR. He wrote that his stepbrother is the only caretaker of his mother, and he does not provided financial support to him. (Item 4.) In his e-Qip, Applicant wrote that he has contact with his step-brother on a quarterly basis. (Item 5.)

On the ROI, Applicant indicated that he and his step-brother have monthly contact by telephone, and that he is employed as an accountant for a delivery service. His step-brother has no affiliation with any foreign government. (Item 6.)

1.e. The SOR states that Applicant provides financial assistance to his family in Somalia. Applicant admitted this allegation in his RSOR. He wrote that he provides the minimum support of \$100 every month or every two months, solely for the support of his mother. (Item 4.)

### **Current Status of Somalia**

I take administrative notice of the following facts regarding Somalia. Somalia is a federal government, recently established in 2012. The United States initially established diplomatic relations with Somalia in 1960, after Somalia gained independence from British and Italian administrations. However, following a 1969 coup, Somalia's elected government was replaced with military rule. In 2012, a political transition occurred with the election of a new federal government, the adopting of a provisional constitution, the election of a new president, and the naming of a prime minister. The new government was formally recognized by the United States in January 2013.

The Somali based terrorist group, al-Shabaab, remained the primary terrorist threat in East Africa in 2014. The ability of the federal, local and regional authorities to prevent and preempt al-Shabaab terrorist attacks remain limited. In addition to the threats posed by al-Shabaab, government security forces committed human rights abuses, and civilian authorities were unable to maintain effective control over these forces.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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 access to classified information will be resolved in favor of 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. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The applicable conditions in this case include: AG ¶ 7(a) “contact 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.” This applies because Applicant’s mother, brother, sister and step-brother are citizens and residents of Somalia, a country of heightened risk.

I find AG ¶ 7(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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information,” is also applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. Because of Applicant’s close and continuing relationship with his mother, who is a citizen and resident of Somalia, and because limited evidence was submitted as to Applicant’s relationships in and loyalties to the United States, I cannot find that AG ¶ 8(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,” is applicable to this Applicant. I also do not find that any other mitigating factor is applicable to this case.

### **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(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. Based on the reasons cited above as to why the disqualifying conditions apply under Guideline B, and why no mitigating conditions apply, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

### **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. through 1.e.:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge