



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



In the matter of:)
)
) ISCR Case No. 14-04048
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Department Counsel
For Applicant: *Pro se*

06/15/2015

Decision

DAM, Shari, Administrative Judge:

Applicant was born in Sudan and immigrated to the United States in 2001. He became a naturalized U.S. citizen in 2007. Applicant has two siblings, six half-siblings, and four in-laws, who are citizens and residents of Sudan. For 12 years he sent financial support to his mother, who lived there but recently died. Applicant failed to present sufficient evidence to mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 10, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1990), 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 effective after September 1, 2006. The SOR detailed reasons why DoD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him.

Applicant answered the SOR in writing November 6, 2014, (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 24, 2015, and issued a Notice of Hearing on March 10, 2015, scheduling the hearing for April 2, 2015. The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence, which were admitted without objection. Applicant testified. He offered five exhibits (AE) A through E, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 10, 2015. The record remained open until April 21, 2015, to give the parties an opportunity to submit additional documents. Department Counsel submitted another document as noted below. Applicant submitted an additional document that I marked as AE F and admitted without objection.

Procedural Rulings

Department Counsel requested administrative notice (AN) of facts concerning Sudan. She provided 12 supporting documents to show detail and context for those facts (HE 1.) Applicant did not object to the request or documents, and Department Counsel's request was granted. (Tr. 14.)

During the hearing, I requested information regarding Applicant's Joint Personnel Adjudication System (JPAS) entry. Department Counsel submitted said document that I marked as HE 2 and admitted into the record without objection. (Tr. 57.)

On April 20, 2015, Department Counsel submitted another exhibit, which she requested be appended to the 12 documents in HE 1. Applicant had no objection, and Department Counsel's request is granted. (GE 5.)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See 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).

Findings of Fact

In his Answer, Applicant admitted the allegations contained in the SOR. His admissions, including those made in an April 2010 and October 2013, Counterintelligence Focused Security Screening Questionnaires (CFSSC), are incorporated herein as findings of fact. (Answer; GE 3, 4.)

Applicant was born in Sudan. He is 47 years old. In 1989 at the age of 22, he left Sudan and went to India to pursue a college education. In 1994 he graduated from an Indian university with a bachelor's degree. In 2001 he immigrated to the United States

on a lottery visa. He became a naturalized U.S. citizen in 2007. (Tr. 21-22; GE 1.) From June 2010 to November 2011, he worked in the Middle East as a linguist for a defense contractor. From November 2011 until January 2012 he worked for a different defense contractor in the Middle East. (Tr. 25, 27.) He held an interim security clearance during that time. In February 2012 he returned to Sudan to take care of his ailing mother. He stayed there until March 2013. On his return he was unemployed for a period of time. (GE 3.) He now works for a limousine service. (Tr. 23.) He returned to Sudan once in 2009, twice in 2012, and twice in 2014.¹ (Tr. 29, 36, 40.)

Applicant's parents were born in Sudan. His father is deceased. His mother resided there until she died in August 2014. From 2002 until she died, he sent her about \$600 a year. (Tr. 33, 38; GE 3.) His brother and sister are citizens and residents of Sudan. (Tr. 38.) He speaks to his brother about once a month, and his sister every three months. (Tr. 30, 34.) Applicant's step-mother is a former member of the Sudanese parliament. His step-father is a retired Sudanese Military officer. He speaks to his step parents annually. (GE 3, 4.) Four of his half-brothers and his two half-sisters are citizens and residents of Sudan. Another half-brother is a citizen of Sudan, residing in Ukraine. (AR.) He reported in October 2013 that he spoke to his step-family members quarterly. (GE 3.) He testified that he now speaks to one half-brother periodically and the others not as often. (Tr. 32.) He spoke to his half-brother living in Ukraine about three months ago. (Tr. 31.) He continues to speak to his half-sisters once every three months. (Tr. 34.) Other than his wife, he has no immediate relatives living in the United States. (Tr. 28.)

In November 2012 Applicant married his wife while visiting Sudan. She was born in Sudan and resided there until September 2014, when she moved to the United States and became a permanent U.S. resident. He sponsored her for citizenship. She worked as a pharmacist in Sudan. She is attending a U.S. school. (GE 1, 3; Answer.) They are expecting their first child in June 2015. (Tr. 9.) Her parents were born in Sudan. Her father is deceased. Her mother is a citizen and resident of Sudan. She speaks to her mother every day. (Tr. 35.) His two brothers-in-law and sister-in-law are citizens and residents of Sudan. (Tr. 35.) Applicant's wife has no immediate relatives living in the United States. (Tr. 28.) Applicant gave or sent his wife about \$1,200 while she was living in Sudan. (GE 3.)

Applicant owns a house in the United States, which he purchased in 2008 for about \$100,000. The mortgage balance is about \$65,000 to \$70,000. He does not have any retirement accounts in the United States. (Tr. 37.)

Applicant's uncle testified. He is Applicant's father's brother. He has lived in the United States since 1996. He is married and has children, all of whom reside in the United States. He worked as an U.S. Army interpreter from 2003 to 2010 in the Middle East and held a security clearance. He said Applicant attends some family functions. He stated that Applicant is hard-working and loves the United States. (Tr. 49-54.)

¹Applicant returned to Sudan twice in 2012, once to visit his mother, and once to marry his wife. He returned twice in 2014, once before his mother died and once after her death. (Tr. 33, 40.)

Applicant provided a letter from an Air Force colonel for whom he worked during a ten month tour in the Middle East. The colonel complimented Applicant on his translation competency and performance. (AE E.) Applicant also submitted a Certificate of Appreciation for his work there. (AE D.)

Sudan

I took administrative notice of the facts set forth in the Administrative Notice documents concerning Sudan, which are incorporated herein by reference. Of particular significance are Sudan's history of state-sponsored terrorism, and the United States' trade embargo on Sudan. Sudan has a dismal record of human rights violations and is experiencing significant political unrest. The U.S. State Department has issued travel warnings to the country because of ongoing threats to U.S. citizens and its interests. Sudan engages in illegally collecting U.S. technologies and proprietary materials.

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 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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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 that, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for access to classified information seeks to enter 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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

Foreign Influence

AG ¶ 6 explains the security concerns pertaining to foreign influence as follows:

Foreign contacts and interest 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 sets out two conditions that could raise a security concern and may be disqualifying in this case:

- (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; and

- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The mere possession of close family ties with a family member living in Sudan 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)).

Sudan has significant internal anti-western terrorism threats that operate openly contrary to U.S. interests. It is known to target U.S. citizens to obtain protected information. The relationship of Sudan with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with family members living in Sudan, or holding Sudanese citizenship and residing in the United States, do not pose a security risk. While there is no evidence that intelligence operatives or terrorists from Sudan 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. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist family members with ties to Sudan. Accordingly, Applicant's family connections there have more potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a) than would similar connections to many other countries.

Applicant's relationships with two siblings, four in-laws, and six half-siblings, who are citizens and residents of Sudan, create substantial potential for conflict of interest. His mother no longer poses a security risk. Although his wife now resides with him, she is a citizen of Sudan and maintains relationships with three family members, who are citizens and residents of Sudan. These relationships are sufficiently close in nature to raise a security concern about Applicant's desire to assist those family members by providing sensitive or classified information. The evidence is sufficient to raise potential security concerns under AG ¶¶ 7(a), and 7(d). These facts meet the Government's burden of production by raising the aforementioned foreign influence disqualifying conditions and shifting a heavy burden to Applicant to prove mitigation.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns. Those with potential application in this case are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(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; 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.

Considered in light of the substantial anti-Western terrorism threat and state sponsored terrorist activities in Sudan, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual and those of the United States due to family ties in Sudan. He has ongoing relationships with family members, and an interest in protecting two siblings, six half-siblings, and four in-laws, living in Sudan. He should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist family members, who might be coerced by terrorists or other entities in Sudan. In addition, his communications with Sudanese family members since coming to the United States are sufficiently frequent, such as to not be construed as casual or infrequent. He visited Sudan at least six times since arriving in the United States in 2001. In 2012 he married his wife in Sudan. She resided there until September 2014. Accordingly, he failed to establish mitigating conditions set forth in AG ¶¶ 8(a) or (c).

AG ¶ 8(b) provides some mitigation. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S.," such that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." He has lived in the United States since 2001 and became a citizen in 2007. His child will soon be born in the United States. He has some financial ties to the United States, including a piece of real estate that he purchased. He competently served as a linguist, supporting U.S. troops in the Middle East. He has an extended family living in the United States.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Some mitigating evidence weighs in favor of granting Applicant a security clearance. He is an intelligent, articulate, and educated person, who has lived in the United States for 14 years. His wife is a recent permanent U.S. resident. He has an extended family here. He owns a home in the United States. He worked as a linguist for the U.S. Army in the Middle East and gained the support of his command.

The circumstances tending to support denial of Applicant's clearance are more significant than the facts weighing toward approval of his security clearance. Applicant's two siblings, six half-siblings, and four in-laws are citizens and residents of Sudan. His step-parents both held positions with the Sudanese government. Applicant has frequent contact with his family members residing in Sudan, indicating a commitment to them and their welfare. He sent money to his mother from 2002 until her death in 2014. More importantly for security purposes, there is a significant risk of terrorism and human rights abuses in Sudan. Terrorists there are hostile to the United States, engage in violence against its citizens and residents, and actively seek classified information. Terrorists or the Sudanese government could attempt to use Applicant's family members to obtain protected information and compromise Applicant's responsibilities to the United States.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, Applicant has not sufficiently mitigated the security concerns pertaining to foreign influence. Overall, the record evidence leaves doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant did not mitigate the security concerns arising under Guideline B.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.j:	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.

Shari Dam
Administrative Judge