



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



In the matter of:)	
)	
)	ISCR Case No. 06-25719
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: Greg D. McCormack, Esquire

June 23, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the foreign influence concerns that arose in this case because of his family ties to Sudan.

On November 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges security concerns under Guidelines B (foreign influence). Applicant's response to the SOR was received by the DOHA on January 9, 2008. Applicant admitted all SOR allegations and requested a hearing.

The case was assigned to another administrative judge on February 1, 2008. That administrative judge caused a notice of hearing to be issued on March 3, 2008, scheduling the hearing for April 7, 2008. The case was reassigned to me on April 7, 2008, due to the

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

unavailability of the originally assigned administrative judge. I conducted the hearing as originally scheduled.

The government submitted 13 documentary exhibits that were marked as Government Exhibits (GE) 1-13. GE 1-3 were admitted into the record without objection. Administrative notice was taken of the contents of GE 4-13 without objection. Department Counsel submitted a document containing written comments on the contents of GE 4-13 for my consideration which was marked as Appellate Exhibit (App. Ex. I) and made part of the record without objection. Applicant testified and submitted nineteen documentary exhibits that were marked as Applicant Exhibit (AE) 1-19, and admitted into the record without objection. The transcript was received on April 17, 2008.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 39-year-old man who has been employed as a linguist by a defense contractor since April 2004. Applicant possessed an interim security clearance from the time he was hired in April 2004 until the SOR was issued in November 2007. No allegations have been made that Applicant has ever mishandled or risked the compromise of classified information.

Applicant worked as a linguist with U.S. military forces serving in Iraq from June 2004 until April 2005. His duties included riding in roving military vehicles with military security forces outside secure areas to serve as a translator when Iraqi nationals and other Arab speaking individuals were to be questioned. In that role, Applicant was exposed to the constant threat of encountering improvised explosive devices (IEDs). Additionally, he was exposed to the constant threat of direct and indirect fire from enemy forces both while on those patrols and within military bases in Iraq. One of Applicant's friends was killed while serving in Iraq.

Applicant has served as a linguist with U.S. military forces in another middle eastern country since completing his assignment in Iraq. American military officers and senior noncommissioned officers who served with Applicant and who have had the opportunity to work closely with him wrote the following:

professional and courteous (and) willing to go the extra step to get the mission accomplished (AE 6);

his poise and rapport with both American and foreign officials was integral in continuing the support for the war-fighters in both Iraq and Afghanistan (and) his trustworthiness, professionalism, and selfless sacrifice were unwavering (and he) has always demonstrated a dedication to the United States, even to the point of leaving his family behind to perform duties with the United States military during wartime" (AE 7);

I can personally attest to his outstanding work ethic and flawless character (he) stands shoulder to shoulder with other professionals in supporting our country's beliefs and principles (AE 8);

. . . he has done wonders to foster a [sic] positive relations between US and host nation forces (AE 9);

During my tenure as supervisor of (Applicant), I found him to be an extremely reliable interpreter and he always displayed the coveted characteristics of honesty and dependability (AE 12); and

He constantly displays integrity, service and excellence as he carries out his assigned duties with vigor He is a man of honor, character and passion as this unit has been a part of his life for several years I have the utmost faith and trust in him and do not doubt his ability to maintain his security clearance in accordance with the intended use in support of the Department of Defense. He is, without a doubt, a loyal and dedicated employee who works side by side with members of our United States Air Force, displaying the same level of dedication, commitment, pride and patriotism. One team - one fight! (AE 13)

Applicant has earned a number of certificates and letters of appreciation and recognition (AE 14 & 16) and others mementos (AE 19) in consideration of the support he has provided to U.S. military forces and personnel.

Applicant entered the United States from Sudan in 1993 on a visitor's visa that allowed him to remain in the U.S. for six months. He overstayed the visa and did not exit the U.S. as required. He married a United States citizen in October 1995, and became a naturalized U. S. citizen on August 22, 2001. This marriage ended by divorce in October 2002. Department Counsel's questioning of Applicant and Applicant's answers suggest the first marriage may have been intended to allow him to gain U. S. citizenship. However, there is no evidence to support such a finding.

Applicant worked as a cashier in a convenience store from April 1993 to February 1997. He enlisted in the U.S. Navy in February 1997, but received an entry level separation in April 1997, based on a medical condition. Applicant worked as a cab driver, as a pizza delivery man, and as a cashier from April 1997 until he was hired by his present employer.

Applicant married a Sudanese woman in Sudan in March 2003. He has a four-year-old child and an eight-year-old stepchild from this marriage. His wife and stepchild are Sudanese citizens with U.S. permanent resident alien status. His child is a U.S. citizen. Applicant's wife has applied for U.S. citizenship and his stepchild will automatically gain U.S. citizenship along with his wife. Applicant, his wife, and children reside together in the middle eastern country where he has been assigned by his employer.

Applicant's mother, father, two brothers, and five sisters are all citizens and residents of Sudan. His father is a retired cook who now drives a taxi cab part-time. The entire family resides together in the same house. Applicant's siblings, with the apparent

exception of one sister, are students. Applicant described the family support situation as him having supported his one sister until she completed her education and she is now responsible for supporting the other family members. (Tr. 86-87) None of Applicants family members in Sudan have ever been a member of the military or employed by the Sudanese government.

Applicant visited Sudan for six months in 2000 to care for his ailing father. He vacationed there for two months in 2001, and returned for three months in 2003, during which visit he married his present wife. Since working for his current employer and being stationed in the middle east, Applicant has visited his family in Sudan on four occasions, with the most recent visit occurring in October 2007. Applicant notified his supervisors on each occasion before traveling to Sudan and was granted permission for the travel. He was briefed before and debriefed after each trip to Sudan. Applicant telephones his parents about twice a month.

Applicant has possessed a U.S. passport since August 2001. He destroyed his Sudanese passport once he became a U.S. citizen and considers the destruction of that passport to be the equivalent of renunciation of his Sudanese citizenship. He credibly denies any sense of loyalty or obligation to Sudan and has expressed a willingness to never travel there again if such travel would interfere with his present employment. As Applicant explained at the hearing, he has done everything he can for his family members in Sudan, he must maintain his current job to provide his wife and children a better life, and he will not under any circumstance travel to Sudan in the future. (Tr. 48) Applicant does, however, hope to be able to eventually sponsor his entire family's immigration into the U.S. (Tr. 83-85)

Applicant does not have any assets in Sudan. He earns about \$4,100 per month from his employment. He has minimal financial assets in the United States, consisting of about \$7,000 in a pension plan. (AE 1) His savings consists of approximately \$30,000 worth of gold he has accumulated. (Tr. 98)

Sudan was designated a State Sponsor of Terrorism by the U. S. Department of State on August 12, 1993. (GE 9) It backed Iraq when it invaded Kuwait and provided sanctuary and assistance to Islamic terrorist groups. In the early to mid-1990s, Carlos the Jackal, Osama bin Laden, Abu Nidal, and other terrorist leaders resided in Sudan, and in 1997, the U. S. imposed comprehensive economic, trade, and financial sanctions against Sudan. In August 1998, in the wake of East Africa embassy bombings, the U. S. launched cruise missile strikes against Sudan. (GE 4)

The U.S. and Sudan entered into a bilateral dialogue on counter-terrorism in May 2000, and Sudan has provided cooperation against international terrorism since the September 11, 2001, terrorism attacks in the U.S. However, while Sudan publicly supported the international coalition actions against al Qaida and the Taliban, it criticized the U.S. strikes in Afghanistan and opposed a widening of the effort against international terrorism. (GE 4) On September 6, 2007, the U. S. Department of State warned travelers that the U.S. had received indications of terrorist threats aimed at American and western interests in Sudan. (GE 6)

In Darfur government forces and rebel groups committed serious abuses in 2006, including the killing of at least several thousand civilians. Numerous villages of African tribes were razed and acts of torture and violence were directed against women by government forces and others. Security remains a major problem in the region and reports of violence were increasing during the latter half of 2006.² (GE 8)

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B (foreign influence) with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.³ The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the government is required to present substantial evidence to meet its burden of proof.⁶ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

² Applicant testified his family lives two to three thousand miles from Darfur and have never experienced the type of trouble that exists in that region of Sudan. (Tr. 57-58)

³ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁷ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁸ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

Analysis

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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.

Applicant’s wife and stepchild are citizens of Sudan. They have permanent resident alien status in the United States and reside with him in the middle eastern country where he has been assigned by his defense contractor employer. His parents and siblings are all citizens and residents of Sudan. Applicant traveled to Sudan on numerous occasions between 2000 and 2007 to care for his father, to marry his wife, and to visit with his relatives. Disqualifying Conditions (DC) 7(a): *contact with a foreign family member . . . 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 DC 7(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* apply.

Applicant credibly testified to his unwavering loyalty to the United States and lack of any sense of loyalty or obligation to Sudan. His testimony is strongly supported by the numerous letters of recommendation submitted by U.S. military officers and senior noncommissioned officers who have worked closely with Applicant for the past several years. It is further supported by his demonstrated willingness to place his life on the line in support of the U.S. military effort in Iraq while possessing an interim security clearance.¹³

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

¹³ The Appeal Board has stated: As a general rule, an applicant’s prior history of complying with security procedures and regulations is considered to be of relatively low probative value . . . (citations omitted) However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had

Mitigating Condition (MC) 8(b): *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person . . . 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. applies.*

Additionally, Applicant has complied with his employer's reporting requirements, has notified the employer before his travels to Sudan to visit with family members, and has obtained the express approval of the responsible persons before undertaking such travel. MC 8(d): *the foreign contacts and activities . . . are approved by the cognizant security authority applies.*

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is entitled to substantial consideration under the "whole person" concept. For a period of ten months he placed himself in harm's way by deploying to Iraq and engaging in routine patrols outside secure areas with U.S. military units. He has continued to serve in another middle eastern country with U.S. military forces and has earned high praise and support of many military members. He has been recognized on many occasions by the presentation of certificates and letters of appreciation and commendation and other mementos. Having observed his appearance, demeanor and manner of testifying, I find his assertions of undivided loyalty to the United States to be credible. Applicant is additionally entitled to credit for the work ethic he has displayed as evidenced by his 15 years of uninterrupted employment since immigrating to the United States. His conduct in overstaying a visitor's visa and remaining in the U.S. after his required date of departure is overwhelming outweighed by the totality of his actions since he immigrated to the U.S.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, Applicant has mitigated the foreign influence security concern that existed in this case. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline B is decided for Applicant. It is clearly consistent with the national interest to grant Applicant a security clearance.

made a significant contribution to national security. (citations omitted) The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report attempts at coercion or exploitation.

When an "Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S., [his behavior] constitute[s] important evidence that Applicant's ties and sense of obligation to the U.S. could be sufficiently strong that he [could] be expected to resolve any conflict of interest in favor of the U.S. Directive ¶ E2.8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (Applicant's work as an interpreter in Afghanistan occurred "in the context of dangerous, high-risk circumstances in which [he] made a significant contribution to the national security.") ISCR Case No. 06-25928 at 3-4 (App. Bd. Apr 9, 2008)

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: FOR APPLICANT

Subparagraphs 1.a-e: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge