



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



In the matter of:)
)
) ISCR Case No. 18-00336
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A, Smith, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2019

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings and exhibits, I conclude that Applicant has not mitigated foreign influence concerns raised by his family in Sudan. His request for a security clearance is denied.

Statement of Case

On July 19, 2017, Applicant submitted a security clearance application (Item 3). On February 15, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B for foreign influence. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on April 1, 2018 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On August 14, 2018, Department Counsel submitted the Government's written

case. A complete copy of the File of Relevant Material (FORM), containing four Items, was received by him on September 17, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. He did not respond within the time allotted. On January 16, 2019, the case was assigned to me. Items 1 through 3 are admitted into evidence.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to Sudan. Department Counsel provided a five-page summary of the facts, supported by five Government documents pertaining to Sudan, marked as Item 4. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge and not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.j. The facts are as follows:

Applicant is 44 years old. He was born in Sudan and earned a bachelor's degree from a university in Sudan. He immigrated to the United States in 2005 and was naturalized as a U.S. citizen in 2010. He is married and has one child. Applicant has been employed by a government contractor since October 2014. (Item 3.)

Applicant's wife is a citizen and resident in Sudan. She has never been to the United States. She works as a teacher in Sudan, for the Ministry of Education. Applicant has applied for her to immigrate to the United States. Applicant and his wife have a five-year-old child, who resides in Sudan with Applicant's wife. Applicant communicates with his wife and child on a weekly basis. He sends them \$200 in support monthly. (Answer; Item 3.)

Applicant's parents are citizens and residents in Sudan. His father is 84 years old and his mother is 64 years old. They are cared for by Applicant's younger brother, who is also a citizen and resident of Sudan. In addition to caring for their parents, Applicant's younger brother is a student. (Answer; Item 3.)

Applicant's four sisters are citizens and residents in Sudan. They are married and Applicant has casual and infrequent contact with them. (Answer; Item 3.)

Applicant's mother-in-law and father-in-law are citizens and residents in Sudan. His father-in-law is 62 years old and is employed by the Ministry of Health in Sudan. Applicant's mother-in-law is approximately 54 years old and is a homemaker. (Answer; Item 3.)

Applicant's brother-in-law is a citizen and resident in Sudan. He is employed by the Sudanese Ministry of Interior. Applicant reported that his contact with them is "very casual and infrequent." (Answer.)

Applicant's sister-in-law is a citizen and resident in Sudan. She is married to a Sudanese man. Applicant reported that his contact with them is "very casual and infrequent." (Answer.)

Applicant maintains contact with a friend from Sudan that resides in Egypt. His friend lives as a refugee in Egypt, after fleeing Darfur. He cannot return to Sudan "for he will be in danger if he chooses to go back." (Answer.) He is "currently working on establishing citizenship other than Sudan." (Answer; Item 3.)

Sudan

Sudan is governed by an authoritarian President. The National Congress Party has held near-absolute power in Sudan for almost 30 years. Since 1993, Sudan has been designated by the U.S. Department of State as a state sponsor of terrorism, due to concerns about Sudanese support to international terrorist organizations including Abu Nidal Organization, Palestine Islamic Jihad, Hamas, and Hezbollah. The U.S. Department of State warns U.S. citizens not to travel to Sudan due to risks of terrorism, armed conflict, and violent crime. Westerners and Western interests are targeted through suicide operations, bombings, shootings, and kidnappings. Violent crimes targeting Westerners including kidnappings, armed robberies, home invasions, and carjacking occur throughout Sudan. Arbitrary detentions of foreigners have been reported.

In 2003, non-Arabs in the Darfur region of Sudan rebelled against the Sudanese government, protesting decades of political and economic neglect. The government responded with brutal force, and more than 300,000 people were killed in the ensuing conflict. More than two million people have been displaced as a result of that conflict.

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, 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(a), 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. Under Directive ¶ E3.1.15, an “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 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 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 7. Two 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.

Applicant's wife, parents, parents-in-law, siblings, and siblings-in-law are all citizen and residents in Sudan. His ties to his Sudanese friend in Egypt also create a risk of exploitation, should his friend return to Sudan. His wife is employed by the Ministry of Education. His father-in-law works for the Ministry of Health. His brother-in-law works for the Ministry of Interior. There is an articulated heightened risk associated with having relationships with family members in or tied to Sudan, due to Sudan's sponsorship of terrorism, its authoritarian government, and the threats to Westerners in Sudan. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

None of the above conditions are mitigating in this instance. Applicant is in close contact with his wife and child, communicating with them weekly and sending them money monthly. While his contacts with the rest of his family and his friend are less frequent, they are still bonds that tie him to Sudan. A potential for a conflict of interest is present due to his ties to his family in Sudan, the nature of the Sudanese government, and the unrest in Sudan. He failed to demonstrate deep and longstanding loyalties to the United States. The record contains little information on assets, or physical or emotional bonds to the United States. Without more information, it cannot be determined that Applicant would resolve any conflict of interest in favor of the U.S. interest.

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 relevant 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.

According to 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 applicable guidelines and the whole-person concept. I considered

the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me with doubt as to Applicant's suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for foreign influence.

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:

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|----------------------------|-------------------|
| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 1.a and 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 national security eligibility and a security clearance. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge