



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



In the matter of: )  
)  
) ISCR Case No. 18-01475  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro Se*  
08/27/2019

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant has resolved or is resolving his financial issues. His longstanding U.S. ties to the United States mitigate security concerns raised by his familial relations in South Sudan. Eligibility for access to classified information is granted.

**History of Case**

Applicant submitted a security clearance application (SCA) on January 18, 2017. On November 17, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines F and B. Applicant answered the SOR on November 30, 2018, and requested a hearing before an administrative judge.

I was assigned to the case on January 30, 2019. On April 1, 2019, I issued an order to both parties to produce their documentary evidence by April 29, 2019. On April 5, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 15, 2019, and I convened the hearing as scheduled. Government’s Exhibits (GE) 1 through 9 and Applicant’s Exhibits (AE) A through F, were admitted without objection. Applicant, his wife, and another witness testified. I received the transcript (Tr.) on May 29, 2019. The record was held open until July 8, 2019, to allow

Applicant to submit additional documentation. He timely submitted AE G through I, which are admitted without objection, and the record is closed.

### **SOR Amendment**

During the hearing, I amended the SOR to conform to the record evidence, pursuant to Paragraph 17 of the Additional Procedural Guidance of the Directive. I changed SOR allegation ¶ 1.c to read, "Your mother, sister, and sister-in-law are citizens of South Sudan, residing in Uganda." There were no objections to the amendment to the SOR. (Tr. 69-70)

### **Administrative Notice**

I took administrative notice of facts concerning the Republic of South Sudan (South Sudan). Those facts are set forth in the Government's Request for Administrative Notice for South Sudan, marked as Hearing Exhibit (HE) I. 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 50 years old, and he was born in what is now South Sudan. In 1999, Applicant and his wife fled Sudan and entered the United States. They were persecuted by the Sudanese government due to their religion. Applicant and his wife were naturalized in 2005. He has been married to his wife since 1999, and they have five children between the ages of 8 and 18, all of whom were born in the United States. (Tr. 27-28, 101; GE 1; GE 3 at 2, 8; AE H)

In 1995, Applicant received a college degree from a school in South Sudan, and he has completed some college courses in the U.S. Between June 2006 and January 2009, he served as a linguist in Iraq with the U.S. Army and the U.S. Marine Corps. During this period, he was in Fallujah, Ramadi, and Baghdad, and subject to live fire. He was granted a secret security clearance in 2006, and he received a top secret, sensitive-compartmented information clearance in 2008. He is sponsored by a defense contractor and requires a clearance for this position. (Tr. 17, 25-26, 30-35; GE 1; GE 3 at 2)

After Applicant returned to the United States from Iraq in January 2009, he was unemployed for eight months. He was then employed by a defense contractor from August 2009 until late 2011, when his position was eliminated. Applicant struggled to regain employment, and as a result, in the spring of 2009, he and his wife started a trucking company. They owned a tractor-trailer truck, leased trailers, and hired operators to drive their truck. They closed the business in 2012. (Tr. 17-18, 35-39; GE 1 at 18-21; AE C)

In approximately May 2012, an individual filed a lawsuit against Applicant and his company for \$75,000. The plaintiff was supposed to buy Applicant's truck, but the plaintiff misplaced a trailer; as a result, Applicant cancelled the transfer of title for the truck. In May 2019, the lawsuit against Applicant was dismissed. In June 2019, the lawsuit against Applicant's company was dismissed. At this time, there are no ongoing lawsuits against Applicant or his company. (Tr. 37-39, 45-46; GE 1 at 71; GE 2 at 3; AE E; AE F; AE I)

After Applicant closed his trucking company in 2012, he was unemployed for several months. To support his family, he moved to another state and drove a cab for approximately one year. In 2014, Applicant and his wife opened a restaurant together. Because the restaurant was not doing well, Applicant worked for other businesses between May 2017 and February 2018. At that time, they closed the restaurant because it was not profitable. Applicant currently drives a supply truck and restocks gas stations with vending supplies. His wife owns a cleaning business, and together they cater events several times a year. (Tr. 41-44; GE 1 at 13-18; GE 2 at 2)

Due to Applicant's inability to find consistent employment and the two failed business ventures, he fell behind on his mortgage payments. Applicant filed for Chapter 13 bankruptcy protection in April 2016 to avoid foreclosure. His monthly mortgage payment was \$1,500, and the monthly bankruptcy payment was \$1,000. Because his restaurant was not doing well, he was unable to make the required bankruptcy payments, and the bankruptcy was dismissed in November 2017. (Tr. 47-49, 97; GE 1 at 68-69; GE 2 at 3-4; GE 3 at 6; GE 4 at 4; GE 5 at 2; GE 7)

Applicant filed for Chapter 13 bankruptcy protection in October 2017, and the plan was confirmed in March 2018. Since the confirmation of the bankruptcy plan, he has made monthly payments of \$3,800. His mortgage is included in the bankruptcy plan as well as the credit card debts alleged in SOR ¶¶ 2.c and 2.d. (Tr. 49-51, 54-56, 60; GE 4 at 4; GE 5 at 2; GE 8)

Applicant and his wife follow a written budget, and they attended a Dave Ramsey credit-counseling class through their church. They also received credit counseling in conjunction with their bankruptcies. They have no outstanding debts related to their former businesses. They owe no new outstanding income taxes and have timely filed their income tax returns for the past several tax years. Applicant brought to the hearing a \$3,800 money order that reflected his March bankruptcy payment. After the hearing, Applicant provided a spreadsheet reflecting the payments he made between March and May 2019 to the bankruptcy plan. Although he did not provide documentation of all of the payments he has made since March 2018, when the plan was confirmed, he and his wife testified credibly that he has been making the required monthly payments. The government offered no evidence to rebut his claims, and the admitted credit reports do not show any new unalleged debts. (Tr. 61, 97-100, 104; GE 4; GE 5; GE 6)

## South Sudan

South Sudan became an independent presidential republic in July 2011, when it gained its independence from Sudan. Shortly thereafter, conflict arose between the government and opposition forces, and it is an ongoing issue. Additionally, there has been border conflict between South Sudan and Sudan and South Sudan and Uganda. As a result, over a million people have been displaced and tens of thousands were killed. Due to ongoing armed conflict, crime, human rights issues, including extrajudicial killings, abuse, rape, and abduction, the U.S. Government advises against travel to South Sudan. South Sudan is not known for intelligence-collection efforts against the United States or U.S. citizens.

The Government did not request that I take administrative notice of any facts or issues related to Uganda. (Tr. 83)

The SOR alleged that Applicant's half-brother, stepbrother, and brother-in-law (sister's husband) are citizens and residents of South Sudan, and they currently serve in the South Sudanese Army. Applicant testified that all of these men are still citizens and residents of South Sudan. He has not seen his half-brother since approximately 1997, and the last time he spoke to him was in 2008. Applicant heard that his stepbrother is a major in the South Sudan Army. Applicant met his stepbrother once when he was young and was still living in Sudan, and he spoke to him once in 2005. Applicant's brother-in-law is also an officer in the South Sudan Army. Applicant saw him in 2007, when Applicant visited his mother in Uganda, but he does not communicate with his brother-in-law. Applicant does not know the positions, titles, or responsibilities of these relatives within the South Sudan Army. (Tr. 62-68, 79; GE 3 at 3-4)

The SOR alleged that Applicant's sisters-in-law are citizens and residents of South Sudan, and they work for the South Sudan Ministry of Finance. Applicant testified that both women fled South Sudan as a result of the conflict, and they now reside in Uganda. Neither sister-in-law currently works for the South Sudan Ministry of Finance. (Tr. 67-68; GE 3 at 3-4)

The SOR alleged that Applicant's mother, sister, and sister-in-laws are citizens of South Sudan who reside in Uganda. Applicant's mother is a U.S. legal-permanent resident and previously resided with his family in the United States from 2008 until 2011. Applicant has not seen her since 2011. They speak approximately once a month, and he provides her with less than \$1,000 a year in financial support. Since 2000, he has sent her a total of approximately \$15,000. He has no financial assets in South Sudan. (Tr. 68, 70-72, 82-83; GE 3 at 3-4; AE B)

The last time Applicant saw his sister was in 2007, when he went to Uganda for a family gathering or reunion. She cares for their mother. (Tr. 73) The last time he saw his sister-in-law was in the 1980s, and she is a homemaker. (Tr. 74)

The SOR alleged that Applicant's father-in-law, mother-in-law, brothers-in-law, and sisters-in-law are citizens and residents of South Sudan. Applicant's mother-in-law and father-in-law reside in the United States with one of their sons, who is a naturalized citizen. They are in the process of obtaining their Green Cards. One sister-in-law and one brother-in-law are residents of Australia. Three of his sisters-in-law are residents of Uganda, and they are in the process of moving to Australia. One sister-in-law resides in India, and she is in the process of moving to Australia. One sister-in-law resides in the United States. None of Applicant's wife's eight siblings currently reside in South Sudan. (Tr. 75-77, 80-82, 95-97; GE 3 at 4-5)

Applicant's former co-worker testified to Applicant's good character, trustworthiness, sense of responsibility, and loyalty to the United States. The witness also served as a linguist in Iraq for a significant period. They met in 2009 and worked together until approximately 2011. The witness has held a security clearance and recommended that Applicant receive a clearance. (Tr. 87-94)

Applicant's wife testified about how hard he has worked to support their family, applying for many positions, and even cutting the grass for fellow church members. He is a responsible and loyal person and wants to serve his country. Their family is involved in the church, and their oldest daughter is attending a U.S. college this fall on a full scholarship. (Tr. 100-107)

During his Iraq deployment, Applicant was awarded several command coins to signify the service he provided to various military commands. Additionally, he received a letter of appreciation related to his service in Iraq. The Marine officer described Applicant as invaluable, diligent, responsible, hardworking, and devoted despite the duress of enemy fire. The Marines with whom Applicant worked relied upon his linguist skills in "countless tactical interrogations, convoys, foot patrols, detainee screenings, and document exploitations." (Tr. 108; AE C; AE D)

## **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 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 F: Financial Considerations**

The security concern under Guideline F is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An

individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

Applicant's admissions and the record evidence establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

AG ¶ 20 describes conditions that could mitigate those security concerns. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Over the years, Applicant experienced several professional setbacks that were beyond his control. After he returned from Iraq in January 2009, he struggled to find steady and gainful employment to support his wife and five children. In an effort to support his family, he established a trucking company and owned a restaurant, both of which proved unprofitable. He drove a cab and mowed lawns in an effort to support his family.

As a result of his unsteady income, Applicant filed for Chapter 13 bankruptcy in 2016 and in 2017. He testified that he has been making his monthly bankruptcy payments, as required, since the plan was confirmed in March 2018. He provided some documentation to support his claims. Although he did not provide a status update for the bankruptcy or proof of all of his payments, his credible testimony demonstrates that he has made a good-faith effort to repay his overdue creditors and resolve his debts. Additionally, he has no new debts; files his state and Federal income-tax returns in a timely manner; follows a written budget; and has attended credit counseling. Finally, the lawsuit against Applicant was resolved in his favor.

There is sufficient evidence to show that Applicant's finances are in good standing and he acted responsibly to address the alleged delinquent debts. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), and 20(d) was established.

### **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 several family members who are citizens of South Sudan but reside in Uganda. They fled South Sudan due to the armed conflict and have lived in Uganda since at least 2007, when he last visited them. The Government did not provide evidence that Uganda is a country of heightened risk or concern. Nor do these family members appear



to be in positions that they would be subject to foreign exploitation, inducement, manipulation, pressure, or coercion.

Applicant has limited ongoing familial connections with his half-brother, stepbrother, and brother-in-law who all serve in the South Sudan Army. These relationships create a heightened risk of foreign pressure or attempted exploitation because of the risk of armed conflict in South Sudan. 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.

At this time, Applicant has only three foreign contacts who continue to reside in South Sudan. Although they are employed by the South Sudan Army, he has had very limited contact with them for at least ten years. His relationships with these individuals is casual and infrequent.

Applicant has significant familial and financial ties to the United States. He owns his own home, and his wife has a business in the United States. Their children were all born in the United States and several of their extended family members have immigrated to the United States. Applicant's work with the U.S. military in Iraq demonstrates his sense of obligation to the United States outweighs his foreign relationships.

Security-clearance determinations are predictive judgments as to whether an individual will safeguard classified information. The DOHA Appeal Board has identified "an exception in Guideline B cases in which applicants demonstrate that they have made significant contributions to national security in dangerous, high-risk circumstances." ISCR

Case No. 10-05329 at 3 (App. Bd. Oct 17, 2011). In this case, Applicant demonstrated his significant contributions to national security while serving in high-risk combat environments on multiple assignments totaling 27 months. U.S. Military personnel repeatedly and unreservedly entrusted Applicant with their lives and attested to Applicant's work performance and character in dangerous environments. Mitigation under AG ¶¶ 8(a), 8(b), and 8(c) was established.

### **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). Applicant has lived in the United States for approximately 20 years, he served in Iraq, under fire, for over two years, and was an invaluable member of the teams with which he served. Despite struggling financially after his deployments, he has worked hard to regain steady employment and resolve his debts through a bankruptcy. His connections and ties to the United States clearly outweigh any connections to a foreign country, and his family members who continue to reside in South Sudan and Uganda are either casual or they are not in positions that would cause a heightened risk.

After weighing the disqualifying and mitigating conditions under these guidelines, and evaluating all the evidence in the context of the whole person, Applicant has mitigated the security concerns at issue. Accordingly, Applicant has 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: FOR APPLICANT

Subparagraph 1.a-1.e: For Applicant

Paragraph 2, Guideline F: FOR APPLICANT

Subparagraph 2.a-2.e: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

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CAROLINE E. HEINTZELMAN  
Administrative Judge