



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-01683
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence and financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On July 26, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 5, 2018, and requested a hearing before an administrative judge. Department Counsel amended the SOR on an indeterminate date adding allegations under Guideline B, foreign influence. Applicant responded to the amended SOR on April 9, 2019. The case was assigned to me on July 3, 2019. The hearing was convened as scheduled on July 18, 2019.

Evidence

Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A through L, which were admitted without objection. The record was held open for Applicant to submit

additional information. He submitted documents that I have marked AE M and M-1 through M-7 (AE M is an e-mail and M-1 through M-7 are the attachments to that e-mail) and admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Sudan. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that Sudan has been a state sponsor of terrorism with a dismal human rights record. Terrorists groups are active in Sudan. Armed conflicts have raged in and around Sudan, and the government was recently overthrown, resulting in a national state of emergency.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since February 2018. He has a master's degree from an Indian university. He is married with two children. (Tr. at 14-15, 31, 56; GE 1-3.)

Applicant was born in Sudan to Sudanese parents. He immigrated to the United States under the lottery system in 1997. He became a U.S. citizen in 2002. His wife is a U.S. citizen originally from Sudan. His children were born in the United States. His in-laws are U.S. citizens and residents. (Tr. at 14, 31-32, 42; GE1-3)

Applicant came from a large family. His parents have been deceased for decades. His stepmother, six siblings, and four half-siblings are Sudanese citizens. Most are also residents of Sudan. He has a brother who lives in Saudi Arabia; a half-sibling who is a U.S. citizen and resident; and a half-sibling who is a citizen and resident of the United Kingdom. One of Applicant's brothers is a retired officer in the Sudanese military. (Tr. at 32-35; Applicant's response to SOR; GE 1-3)

Applicant last visited his family in Sudan in 2014. He communicates with his family in Sudan through social media. He does not own any property in Sudan. He owns his home in the United States. He credibly testified that he is loyal to the United States, and that his family in Sudan could not be used to coerce or intimidate him into revealing classified information. (Tr. at 14-16, 37-38, 40-41, 44; GE 1-3)

Applicant has a history of financial problems, which he attributed to his and his wife's unemployment, underemployment, and medical problems, particularly during periods of unemployment when they did not have medical insurance. The SOR alleges 17 delinquent debts totaling about \$51,200. Five of the debts, totaling about \$10,250, are medical debts. Two debts totaling about \$4,560 are defaulted student loans. Except as addressed below, the allegations are established through credit reports and Applicant's admissions. (Tr. at 14-15, 49-54; Applicant's response to SOR; GE 3-6) Since he was hired by his current employer in February 2018, he has been addressing the debts as follows:

SOR ¶ 1.a alleges a delinquent loan with a balance of \$16,875. The loan was for in vitro fertilization (IVF) for his wife to conceive their second child. Applicant entered into a \$100 per month payment plan in August 2018. He documented \$100 payments in August, September, and October 2018. He entered into another \$100 per month payment plan on August 2019. The balance is \$12,459. It is unclear if the balance reflects additional undocumented payments. (Tr. at 57-64; Applicant's response to SOR; GE 4-6; AE F, L, M, M-4)

A collection company is collecting three debts totaling \$10,200 owed to the same bank (SOR ¶¶ 1.b-1.d). Applicant agreed to a \$50 per month payment plan in August 2018. He documented \$50 payments in August, September, and October 2018. His checking account reflects 11 additional \$50 checks, but he did not provide the cancelled checks, so they cannot be positively accredited as payments. However, I note that the balances on the accounts have gone down. The balance of the SOR ¶ 1.b debt was \$3,648 in August 2017; \$3,298 in March 2019; and \$3,148 in August 2019. The balance of the debt alleged in SOR ¶ 1.c was \$3,287 in May 2018 and \$3,137 in August 2019. The balance of the SOR ¶ 1.d debt was \$3,279 in August 2017; \$2,929 in March 2019; and \$2,729 in August 2019. (Tr. at 64-72; Applicant's response to SOR; GE 4-6; AE E, J, L, M, M-5, M-6)

SOR ¶ 1.e alleges a charged-off \$3,075 credit card debt. Applicant and the creditor settled the debt in August 2018 for 31 monthly \$100 payments. In July 2019, the creditor verified that they had received \$1,200 in payments, and the balance was \$1,996. (Tr. at 74-77; Applicant's response to SOR; GE 4-6; AE G, M, M-2, M-3)

Applicant has brought his two student loans (SOR ¶¶ 1.f and 1.h) out of default, and he is current on their combined monthly payments of \$50. Because of interest, the balances had increased from the total amount alleged in the SOR (\$4,560) to \$4,676. Recent payments have reduced the total balance of the two loans to \$4,415. (Tr. at 77-79; Applicant's response to SOR; GE 4-6; AE L, M-5, M-6)

SOR ¶ 1.g alleges a charged-off \$2,528 credit card debt. Applicant entered into a \$50 per month payment plan in August 2018. The balance of the debt was \$2,200 in March 2019 and \$2,000 in August 2019. (Tr. at 80; Applicant's response to SOR; GE 4-6; AE D, M-2, M-3)

A collection company is collecting two debts that at one time totaled \$2,077 owed to the same bank (SOR ¶¶ 1.j and 1.k). In August 2018, Applicant agreed to payment plans of \$49.16 and \$49.83 per month for the two debts. He documented his payments and reduced the total amount owed on the two debts to \$1,384 in March 2019 and \$889 in August 2019. (Tr. at 82-85; Applicant's response to SOR; GE 4-6; AE I, L, M, M-5, M-6)

Applicant paid the \$56 debt alleged in SOR ¶ 1.m. He denied owing the \$1,560 debt owed to a telecommunications company (SOR ¶ 1.i). He stated that the company charged him after he cancelled service, and they refused to accept his cell phone back. He disputed the debt with the credit reporting agencies, but the debt continues to be

listed on his credit reports. (Tr. at 81-82, 85-87; Applicant's response to SOR; GE 4-6; AE H, M-1, M-5, M-6)

Applicant denied owing the \$2,250 medical debt alleged in SOR ¶ 1.n. He stated that it is not listed on his credit reports; he did not recognize the creditor; and he did not know what the debt was for. The debt is listed by Experian on the August 2017 combined credit report. It is not listed on any of the subsequent credit reports in evidence. (Applicant's response to SOR; GE 4-6; AE M-5, M-6)

Applicant stated that he paid the \$134 and \$76 medical debts (SOR ¶¶ 1.l and 1.o). The creditors for the debts are listed simply as "MEDICAL" on the 2017 and 2018 credit reports. He documented a \$150 payment to a creditor in September 2018. The \$134 debt is not listed on any credit report after May 2018. The \$76 debt is listed by Equifax on the August 2017 combined credit report, but it is not listed on the May 2018 and March 2019 Equifax credit reports. There is a \$76 medical debt listed in the August 2019 Equifax credit report, which may correspond to the debt alleged in the SOR. (Tr. at 90; Applicant's response to SOR; GE 4-6; AE M, M-5, M-6, M-7)

Applicant stated that he has payment plans of \$60 each per month for the last two medical debts (SOR ¶¶ 1.p - \$6,468 and 1.q - \$1,319). He documented a \$50 payment in September 2018 to the creditor identified in SOR ¶ 1.q. The debts are listed by Experian on the August 2017 combined credit report. They are not listed on any subsequent credit report. (Tr. at 85, 90; Applicant's response to SOR; GE 4-6; AE M, M-5, M-6, M-7)

Applicant paid or has payment plans for all but one of the non-medical debts alleged in the SOR. He has reduced the total amount owed on the non-medical debts from almost \$41,000 to about \$32,300. The status of the medical debts is unclear, but his most recent credit report only lists one \$76 medical debt. He credibly testified that he is committed to paying all the debts that he legitimately owes. (Tr. at 15, 47-48, 88, 93-98)

Applicant has worked as a linguist in support of the U.S. military in the Middle East since February 2018. He submitted documents and a letter from U.S. military personnel attesting to his excellent job performance, professionalism, commitment, expertise, dedication, and positive attitude, which "were critical to the success of the mission." (AE B, C)

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 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 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 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. 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.

Sudan has been a state sponsor of terrorism with a dismal human rights record. Terrorists groups are active in Sudan. Armed conflicts have raged in and around Sudan, and the government was recently overthrown, resulting in a national state of emergency. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (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; and
- (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.

I considered the totality of Applicant's ties to Sudan. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has worked overseas in support of the national defense. He credibly testified that his family in Sudan could not be used to coerce or intimidate him into revealing classified information. His wife, children, and in-laws are all U.S. citizens and residents.

I find that Applicant's ties to Sudan are outweighed by his deep and long-standing relationships and loyalties in the United States. I find that it is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of Sudan. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. The above mitigating conditions are applicable.

Guideline F, Financial Considerations

The security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (b) a history of not meeting financial obligations.

Applicant has a history of financial problems, including defaulted student loans and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributed his financial problems to his and his wife's unemployment, underemployment, and medical problems, particularly during periods of unemployment when they did not have medical insurance. He also took out a loan for IVF for his wife to conceive their second child. His financial problems were partially beyond his control, as the costs associated with the IVF were not beyond his control.

Applicant has been addressing the debts since he was hired by his current employer in February 2018. He paid or has payment plans for all but one of the non-medical debts alleged in the SOR. He has reduced the total amount owed on the non-medical debts from almost \$41,000 to about \$32,300. The status of the medical debts is unclear, but his most recent credit report only lists one \$76 medical debt. He credibly testified that he intends to pay all the debts that he legitimately owes.

Applicant does not present a perfect case in mitigation, but perfection is not required. A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.

See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I believe Applicant is honest and sincere in his intentions to be financially responsible. There are clear indications that the problem is being resolved and is under control. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan. Financial considerations security concerns are mitigated.

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.

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 have incorporated my comments under Guidelines B and F in my whole-person analysis. I also considered Applicant's favorable character evidence and his work overseas in support of the national defense.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence and financial considerations security concerns.

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | For Applicant |
| Subparagraphs 1.a-1.q: | For Applicant |

Paragraph 2, Guideline B: For Applicant

Subparagraphs 2.a-2.d: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge