



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



In the matter of:)
)
) ISCR Case No. 18-01763
)
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: Alexander Laughlin, Esq.

04/26/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant’s longstanding U.S. ties and his strong devotion to the United States mitigate security concerns raised by his familial relations in South Sudan. Foreign influence security concerns are mitigated. Clearance is granted.

History of Case

Applicant submitted a security clearance application (SCA) on August 25, 2016. On July 3, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline B. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 27, 2018, and requested a hearing before an administrative judge. I was assigned to the case on October 29, 2018. On December 31, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 16, 2019. I convened the hearing as scheduled. Government’s Exhibits (GE) 1 through 3 and Applicant’s Exhibits (AE) A through V, were

admitted without objection. Applicant called two witnesses to testify on his behalf. Applicant testified, and I agreed to hold the record open until February 16, 2019, in the event either party wanted to submit additional documents. Applicant submitted two documents post-hearing (AE C and D), which are admitted without objection. I received the completed transcript (Tr.) on January 25, 2019.

Administrative Notice

I took administrative notice of facts concerning South Sudan. Those facts are set forth in the Government's Request for Administrative Notice for South Sudan. (GE 1) These documents are included in the record. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986). Usually administrative notice at security clearance 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). The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. (Tr. 14; GE 1)

Findings of Fact

In his response to the SOR, Applicant admitted all of the SOR allegations. Applicant is approximately 34 years old,¹ and he was born in South Sudan. In 1993, when he was approximately 8 years old, he left South Sudan and travelled to a refugee camp with his older brother. He is considered to be one of the "Lost Boys of Sudan."² At the end of 1993, Applicant's uncle, a Catholic priest, took Applicant and his brother out of the refugee camp to raise them. Applicant received a scholarship and attended a boarding school in Nairobi, Kenya. (Tr. 21-29, 87; AE A, AE B, AE C, AE D, AE E, AE H)

In May 2007, the U.S. Citizenship and Immigration Services notified Applicant that his request for refugee status had been approved under Section 207(a) of the U.S. Immigration and Nationality Act. On August 6, 2007, Applicant arrived in the United States. His airfare was paid by the Church World Service. His only requirement upon arrival to the U.S. was to register for Selective Service, which Applicant accomplished. (Tr. 21-29, 87; AE A, AE B, AE C, AE D, AE E, AE H)

After arriving in the U.S., Applicant immediately sought full time employment and attended school. During his employment as a caregiver for individuals with developmental disabilities, Applicant received an award as employee of the month, and in 2010, he was awarded employee of the year. Applicant attended college, and he paid for his tuition with Pell grants, academic scholarships, and student loans. In December 2012, he became a

¹ Applicant does not know his actual date of birth and this is an estimated date of birth.

² The Lost Boys of Sudan was the name given to a group of over 20,000 boys who were displaced or orphaned during the Second Sudanese Civil War (1987-2005). The boys embarked on treacherous journeys to refugee camps. (Wikipedia)

naturalized U.S. citizen. The day after he took his oath of citizenship, Applicant graduated from college with a bachelor of science in electrical engineering. (Tr. 33-39; AE K)

In 2013, Applicant took a trip to Kenya, Uganda and South Sudan. This is the only trip he has taken to visit South Sudan. He used his U.S. passport for travel and disclosed all travel information on his SCA. He stayed for approximately two weeks in his city of birth visiting his mother, sister and five brothers. After he returned to the U.S., Applicant moved to another state to start his career as an engineer. He took a position in August 2016 with his current employer, a Federal contractor.

Applicant is required to attend security training at his place of employment, even though he does not currently possess a DOD security clearance. Applicant has learned that if an individual expresses any special interest in his work duties, he will immediately report that information to his facility security officer. No one, including his family members in South Sudan, have asked any detailed questions about his work with a Federal contractor. If any of his family members were threatened due to his status as a U.S. citizen or DOD contractor, Applicant would also immediately report that information to his security officer. (Tr. 39-49, 84-85)

Applicant makes approximately \$91,000 annually. He is financially stable and pays his student loans, car payment, and monthly bills. He also repaid his airfare expense to the World Church Service. He is current on all of his Federal, state, and local taxes. He is not married and does not have any children. (Tr. 49-50, 57-58; AE N, AE M, AE P, AE Q)

SOR ¶ 1.a alleges that Applicant's mother is citizen and resident of South Sudan. The SOR also alleges that he has five brothers and a sister, who are also citizens and residents of South Sudan. (SOR ¶¶ 1.b and 1.c.) He admitted these allegations. Applicant calls one of his family members approximately every three weeks. His mother is approximately 68, and she currently resides with two of his brothers in a single room hut in a village. His mother has no formal education and is a subsistence farmer. Applicant's family have no connection to the government or military of South Sudan. (Tr. 84, 88)

The two brothers who reside with Applicant's mother provide for her needs as farmers. Since he graduated from college, Applicant has provided financial support for his mother. In 2014 he sent his family \$1,985. In 2015, he sent \$8,330, which was money for his mother and for a brother who wanted to finish his college education. In 2016 he sent \$252; in 2017 he sent \$255; and in 2018 he sent \$775. In addition, whenever Applicant is overseas for work, he sends about \$200 to \$300 every three months to family members. Applicant reported all pertinent information on his SCA and to the authorized DOD investigator during his background interview. He does not have any financial interests in South Sudan. (Tr. 62- 66, 71-77; GE 2, GE 3; AE V)

Applicant expressed his desire to serve the United States because this country gave him a new beginning. He believes that working with a company that provides secure facilities for Americans around the world is a good opportunity for him to give back to this

country. Applicant considers himself to be 100 percent loyal to the United States of America. (Tr. 77-78, 91)

Administrative Notice – South Sudan³

South Sudan became an independent nation in July 2011. Shortly thereafter, conflict broke out between the government and the Sudan People's Liberation Movement-North in states of Southern Kordofan and Blue Nile (together known as the Two Areas), which resulted in 1.1 million internally displaced persons or severely affected persons needing humanitarian assistance. A separate conflict broke out in the western region of Darfur in 2003, displacing nearly 2 million people and causing thousands of deaths. Fighting in both the Two Areas and Darfur has largely subsided, however the civilian populations are affected by low-level violence including inter-tribal conflict and banditry, largely a result of weak rule of law. The United Nations (UN) and the African Union have jointly commanded a Darfur peacekeeping operation (UNAMID) since 2007. Peacekeeping troops have struggled to address insecurity in Darfur and have increasingly become targets for attacks by armed groups. Sudan also has faced refugee influxes from neighboring countries, primarily Ethiopia, Eritrea, Chad, Central African Republic, and South Sudan. Armed conflict, poor transport infrastructure, and denial of access by both the government and armed opposition have impeded the provision of humanitarian assistance to affected populations. Of note, in June 2018, the United States State Department reported South Sudan travel advisory at:

Level 4 – Do not travel to South Sudan due to crime and armed conflict. Violent crime, such as carjackings, shootings, ambushes, assaults, robberies, and kidnappings is common throughout South Sudan, including Juba. Armed conflict is ongoing throughout the country and includes fighting between various political and ethnic groups, and weapons are readily available to the population.

The UN, human rights organizations, and media reported the government or its agents committed arbitrary or unlawful killings. Security forces, opposition forces, armed militias affiliated with the government and the opposition, and ethnically based groups were also responsible for extrajudicial killings in conflict zones.⁴ South Sudan is not known for intelligence collection efforts against the United States or U.S. citizens.

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,

³ The information herein on South Sudan is generally taken from GE 1.

⁴ Country Reports on Human Rights Practices for 2017, United States Department of State, Bureau of Democracy, Human Rights and Labor.

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 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).

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a close relationship with an individual living under a foreign government. The mere possession of a close relationship with an individual in a foreign country is not, as a matter of law, disqualifying under Guideline B. If an applicant has such a relationship, this factor alone is sufficient to create the potential

for foreign influence and could potentially result in the compromise of classified information.⁵

As noted, a heightened risk is associated with South Sudan with its persistent violence and human-rights problems. The evidence and Applicant's admissions are sufficient to raise these disqualifying conditions.

Here, Applicant's relationship to his extended family members in South Sudan is far deeper and more than casual, as previously reported. Applicant maintains frequent and regular contact with family members in South Sudan. He has repeatedly provided financial support for his mother and for his brother's college education. After considering and weighing the evidence, I find that Applicant did not rebut the legal presumption of close familial bonds or ties to his family in South Sudan. The relationship with his mother, sister, and five brothers leaves him vulnerable to foreign influence, and creates a heightened risk of foreign exploitation and coercion and the potential risk for a conflict of interest. AG ¶¶ 7(a) and 7(b) are established.

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.

An applicant with relatives, financial interests or other substantial connections to a foreign country faces a high, but not insurmountable hurdle, in mitigating security concerns raised by such foreign ties. An applicant is not required "to sever all ties with a foreign country before he or she can be granted

⁵ See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

access to classified information.”⁶ However, what factor or combination of factors may mitigate security concerns raised by an applicant with relatives in a foreign country is not easily identifiable or quantifiable.⁷ Moreover, an applicant with familial or other connections to a hostile foreign country faces a heavy burden in mitigating security concerns raised by such foreign ties.⁸

Applicant’s strong and longstanding ties to the United States, including his work as a Federal contractor, raises favorable inferences regarding his suitability. Additionally, there is no evidence that South Sudan has tried to use his family as a means to influence him. The government has no burden of showing that South Sudan officials have attempted to exploit Applicant; however, if such evidence existed, it would cause grave security concerns about foreign influence. His oath of allegiance to the United States and Applicant’s security training, honesty in self-reporting his foreign connections, and the candor he exhibited at hearing are sufficient to fully mitigate the security concerns raised by Applicant’s familial connections to South Sudan. Applicant can be expected to resolve any conflict of interest with respect to South Sudan in favor of the United States.

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). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the

⁶ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

⁷ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

⁸ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

context of the whole person and the heightened risk associated with South Sudan, Applicant has mitigated the foreign influence security concerns at issue.

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
Subparagraphs 1.a-1.c:	For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge