



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



In the matter of:)
)
) ISCR Case No. 18-02099
)
Applicant for Security Clearance)

Appearances

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

09/10/2019

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 March 20, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and F (financial considerations). Applicant responded to the SOR on April 25, 2019, and requested a hearing before an administrative judge. The case was assigned to me on June 24, 2019. The hearing was convened as scheduled on August 8, 2019.

Evidence

Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were 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 61-year-old prospective employee of a defense contractor. He will be hired if he receives a security clearance. He has a bachelor's degree from a Lebanese university and a master's degree from a university in the United States. He married in 1989 and divorced in 2017. He has three children. (Tr. at 23, 26-27, 34; GE 1-4)

Applicant was born in Sudan to Sudanese parents. He came to the United States on a student visa in 1989. He became a U.S. citizen in 1995. His ex-wife is a native-born U.S. citizen. His children were born in the United States. (Tr. at 27; GE 1-3)

Applicant parents are deceased. His five siblings are citizens and residents of Sudan. None of his family members have any direct connection to the Sudanese government. He provided some financial support to his family in Sudan when he had the means to do so. He last visited his family in Sudan in 2014. He communicates with his family in Sudan through electronic media. He inherited some property in Sudan with his siblings after his father passed away, but he thought his siblings sold the property. He does not own any other property in Sudan. He owned a home in the United States, but his ex-wife received it in their divorce. 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 25-26, 35-36, 50-57; GE 1-4)

Applicant worked under dangerous conditions as a linguist in support of the U.S. mission in Iraq from about 2004 until 2013. He held a security clearance at the time. Like the U.S. military forces he supported, he came under fire. He submitted documents and a letter from U.S. military and other personnel attesting to his excellent job performance while at risk to his own safety. (Tr. at 20-21, 28-29; GE 1-3; AE A)

Applicant was unemployed from about February 2013 through November 2013 and November 2015 until at least October 2017. He also went through extended periods of underemployment, and he was unemployed as of the hearing date. He indicated that his ex-wife did not pay all their bills while he was working overseas, and his divorce also contributed to his financial difficulties. He was unable to pay all his bills, and a number of debts became delinquent. (Tr. at 21-22, 29-34, 44-48; Applicant's response to SOR; GE 1, 2)

The SOR alleges seven delinquent debts totaling \$11,062. Four of the debts, totaling \$3,362, are defaulted student loans. The allegations are established through credit reports and Applicant's admissions.

Applicant's credit reports indicate that he took out six student loans in 2001 and 2002. The high credit on those six loans totaled more than \$81,000. Two loans, with high credit totaling about \$45,000, appear to have been paid off in 2011. The remaining four loans are the loans alleged in the SOR. The high credit on those four loans totaled more \$40,000. Because of interest, the high credit amounts could be more than the amount that was actually borrowed. As indicated in the SOR and the most recent credit reports, the balances on the four loans were paid down to a total of \$3,362. Applicant testified that he was in recent contact with the creditor handling his student loans. He stated that his income tax refund was withheld to pay his student loans, and the balance due on the loans is now about \$2,600. The creditor will settle the debt for \$2,050 if it is paid within 90 days. (Tr. at 40-41, 50-51; GE 5-7)

Applicant contracted with a nonprofit debt-management organization in July 2019 to assist him in resolving his debts. He agreed to pay \$110 per month, which will be used to pay his debts. He stated that within a few months of getting his job and working overseas, he will easily be able to pay his delinquent debts and student loans. He credibly testified that he will do so. (Tr. at 24-25, 36-43, 49; AE-B)

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. His children are U.S. citizens and residents. He credibly testified that his family in Sudan could not be used to coerce or intimidate him into revealing

classified information. The Appeal Board has stated that such a statement, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security. See, e.g., ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008). In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). 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 made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

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

Applicant attributed his financial problems to his unemployment, underemployment, his ex-wife's failure to pay all their bills while he was working overseas, and his divorce.

Applicant retained the services of a nonprofit debt-management organization in July 2019. He has done little of consequence to actually pay the debts since the SOR was issued. However, he is unemployed and has been unable to address his debts beyond his promise to take care of them after he receives a security clearance and returns to working overseas. The Appeal Board has held that intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant does not have a track record of debt repayment since the SOR was issued, but inspection of his student loans provides insight. He took out six student

loans in 2001 and 2002. The total balance of those loans was more than \$81,000 at one time. While working and able to pay them, he paid around \$78,000 in principal and an unknown amount in interest. He reduced the balance to about \$3,362 at the time the SOR was issued. That is a track record of debt repayment. The balance was further reduced by a withholding of his income tax refund. I am convinced that once he is fully employed, Applicant will pay the remainder of his student loans as well as his other debts. 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 work overseas in support of the national defense. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case." ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). The complicated state of affairs in Sudan places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden.

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.¹

¹ The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded the issues are completely mitigated, and that Applicant will address his financial issues without additional monitoring.

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 F:	For Applicant
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.b:	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