



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



In the matter of:

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ISCR Case No. 18-02693

Applicant for Security Clearance

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: Alan Edmunds, Esq.

10/01/2019

Decision

Curry, Marc, Administrative Judge:

Applicant mitigated the foreign influence and personal conduct security concerns. Clearance is granted.

Statement of the Case

On December 3, 2018 the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) alleging security concerns under Guideline B, foreign influence, and Guideline E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017. The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the interests of national security to grant or continue his security clearance. It recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On December 19, 2018, Applicant responded to the SOR, admitting subparagraph, 1.a, admitting, in part, subparagraphs 1.b and 2.a, and denying subparagraph 1.c. He requested a hearing, whereupon the case was assigned to me on May 7, 2019. On June 27, 2019, DOHA scheduled the hearing for August 14, 2019. The hearing was held as scheduled. At the hearing, I considered Applicant's testimony and incorporated into the record five Government exhibits (GE 1 – GE 5), and 22 Applicant Exhibits (AE A – AE V). Also, I incorporated into the record two memos from Department Counsel, identifying them as Hearing Exhibit (HE) I (Administrative Notice Request – Sudan), and HE II (Administrative Notice Request – Saudi Arabia). HE I and HE II contained multiple attachments detailing information about each respective country. I identified them as HE I, Attachment (Att.) 1 through Att. 5, and HE II, Att. 1 through Att. 4. I took administrative notice of the facts encapsulated in these attachments.

At the close of the hearing, I left the record open until September 6, 2019 to allow the parties to submit additional exhibits. On August 14, 2019, Department Counsel submitted updated information about Sudan (HE III, Att. 1 – Att. 13). I took administrative notice of the requested information. The transcript was received on August 21, 2019.

Findings of Fact

Applicant is a 62-year-old married man with four children. He was born and raised in Sudan, immigrating to the United States on a student visa in 1983 to attend college on an athletic scholarship. (Tr. 28) He graduated in 1989. (Tr. 56) As a religious and ethnic minority in Sudan, Applicant was the "target of hate, harassment, and persecution from the Islamic government of Sudan." (AE B at 1). Consequently, he applied for, and was granted asylum in the United States in 1988, and became a naturalized U.S. citizen in 1997. (GE 2 at 4)

At or about the time Applicant became a naturalized U.S. citizen, he was working in retail. Motivated by a desire to help the country after 9/11, Applicant took a job as a translator in 2003. (AE B at 2) He performed the same work for several years, as the contract changed hands multiple times.

Applicant has been working with his current employer overseas since 2018. (AE I at 2) According to the base commander, Applicant is "a trusted linguist and loyal asset to the team." (AE L at 1) His work increased operational efficiency by saving 150,000 work hours, and it improved the political and military dynamic between U.S. forces and the foreign country's government officials. (AE L at 1) In the course of his duties, he has personally sacrificed, and "put himself in harm's way in support of U.S. forces," sometimes coming under hostile fire. (AE L at 1; Tr. 31) According to his supervisor, the lead linguist, Applicant is a highly valued member of her team, with great flexibility, which he has demonstrated by conducting staff trainings in topics as diverse as basic combat life saver skills and shooting range skills. (AE O) According to his previous supervisor, who oversaw his performance when he first began the job in January 2018,

Applicant contributes, “not only with his language skills, but most of all with his positive approach, his reliability, and his loyalty.” (AE A at 2)

A commander with whom Applicant worked in 2004 and later in 2008, characterized him as “the best cultural advisor and linguist that ever worked for [him] in [his] 30-year . . . career.” (AE A at 3) Appellant’s “astounding” performance compelled the commander to select him numerous times for service as a cultural advisor and linguist for high-level protective service details for distinguished military advisors and visiting U.S. dignitaries. (AE A at 3) In October 2009, Applicant received a certificate of appreciation.

According to a former military member with whom Applicant served in 2007 at another location, Applicant was the most trusted of the three interpreters assigned to his team. (AE A) He would travel into a combat zone with the team “for several days at a time, cultivat[ing] and meet[ing] confidential informants, and generat[ing] written products used for either force protection decisions or to build target packages used to counter/mitigate insurgents.” (AE A at 1) Impressed with Applicant’s competence, Applicant’s supervisor began to rely on his “experience, maturity, and wisdom,” to help him assess the reliability of confidential informants. (AE A at 1) In 2009, Applicant received a certificate of appreciation for his “great service for [the] country.” (AE D at 3)

In February 2012, after returning from leave, Applicant discovered that a new commander had been assigned to the base where he worked. Their first interaction occurred when the commander asked him to drive him to the officer’s club. While en route, the commander asked him to relocate from an off-base flat to a residence on base. (Supplementary Answer at 4) Applicant refused, explaining that it would be difficult to move on short notice. Within 24 hours, Applicant’s employer fired him.

Applicant’s employer never provided a rationale for his dismissal. He did not learn of his ex-employer’s stated reasons for his dismissal until he applied for a security clearance. (Tr. 46) He was alleged to have corresponded with sources without authorization, refused, on occasion, to provide translation services, violated the off-base living agreement by not securing his own transportation, failed to pay a live-in cook for services rendered, and he was alleged to have taken time off without authorization. (GE 4)

Applicant denies these allegations. He never met with any foreign national without receiving prior authorization. (Tr. 41) He was unaware of any issues regarding the quality of his translation services. (Tr. 42) Consistent with his employment agreement for living off-base, Applicant requested a car. (GE 5 at 5) Although he never received one, it did not pose a problem because his clients usually picked him up “since [their] work was off-base anyway.” (Supplementary Answer at 4) As for the allegation involving the live-in cook, Applicant lived in his off-base flat with two other contractors. One of these men hired the cook, and she lived with them in the apartment, together with her husband. Applicant and his roommates agreed to pay the housekeeper \$100 per month for her to cook for them. (Supplementary Answer at 4) Applicant did not care

for the type of food that she cooked, and stopped eating it and he stopped paying the cook. When he was terminated, he was unaware that the cook had filed a complaint with his employer. (Tr. 46)

The part of SOR subparagraph 2.a alleging use of unauthorized leave does not specify the dates that Applicant allegedly took the unauthorized leave. The only time that Applicant recalls when his use of leave could potentially have been a problem was in February 2012 when he stayed on leave for a day longer than he originally requested. (AE G at 1 and 2) He e-mailed his employer while on leave, requesting the additional day, and they approved his request. (AE G at 1) In retrospect, Applicant suspects that he was terminated from his job because the commander who was assigned to the base while he was on leave preferred the translator who was assigned to Applicant's position temporarily while Applicant was on leave because the temporary translator spoke French as well as Arabic. (Supplementary Answer at 5)

Applicant's mother-in-law is a citizen and resident of Sudan. She is elderly and does not work. Before Applicant applied for a security clearance, he spoke with her approximately once per month. (GE 2 at 5) Now, he does not talk with her. (Tr. 16) His wife speaks with her approximately once every four months. On one occasion in 2016, they gave her \$200. (GE 2 at 11)

Applicant has three sisters (S1, S2, and S3). S1 relocated from Sudan to the United Kingdom (U.K.) in 1990, becoming a naturalized citizen there that year. (Tr. 57) She returned to Sudan in 2005 after a peace agreement was reached under which Sudanese expatriates were welcomed back to help develop the country. (Tr. 57) After returning to Sudan, S1 was hired run the ministry that governed public utilities. (Tr. 51) She managed this ministry until she was removed from office in 2017. (Tr. 51) Before her removal, Applicant spoke with her approximately once every three months. (Tr. 57) He has not spoken with her since January 2019 and does not know her whereabouts. (Tr. 51, 56)

S2 moved to the U.K. in 1990, becoming a naturalized citizen in 1990. (Tr. 49; AE M) She returned to Sudan in 2013, living there for four years before returning to the U.K in 2017. (Tr. 50) She is a homemaker. Applicant speaks with her once every three months.

S3 moved to the U.K. in 1990 and became a naturalized citizen. (Tr. 59; AE N) She moved to Saudi Arabia in 2015 to teach, living there for three years before returning to the U.K. (Tr. 60) Applicant is not in touch with her. He does not know what she does for a living.

Applicant is active in his community. He volunteers with his church, working with its vacation bible school, and performing missionary work abroad. (AE A at 4)

Administrative Notice

Sudan

On April 11, 2019, the Sudanese army announced the overthrow of the previous government and the establishment of a transitional military council. (HE III, Att. 1) There is a national state of emergency in effect across Sudan, which gives security forces greater arrest and incarceration powers. (HE III, Att. 4) The Sudanese government does not recognize dual citizenship and is likely to consider U.S.-Sudanese dual citizens as Sudanese citizens only. (*Id.*) In 1993, the United States designated Sudan as a state sponsor of terrorism. (HE I, Att. 2 at 3) Terrorist groups are active in Sudan and have stated their intent to harm Westerners and Western interests through suicide operations, bombings, shootings, and kidnappings. (HE I, Att. 3 at 1)

Saudi Arabia

The Kingdom of Saudi Arabia is a monarchy. The U.S. has designated parts of Saudi Arabia as high terrorism threat locations. (HE I, Att. 3 at 2) Saudi Arabia has a poor human rights record. (HE II, Att. 4 at 1)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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.” (AG ¶ 6) Applicant’s sister, who lived for a few years in Saudi Arabia, returned in 2018 to the U.K., the country where she is a naturalized citizen. Consequently, there are no Guideline B security concerns related to Saudi Arabia.

Sudan is experiencing drastic change, as the military ousted its long-time dictator approximately six months ago. Instability runs high, and it is extremely unsafe for foreign travelers. Terrorism remains a significant problem. One of Applicant’s sisters, who lived in Sudan for four years, returned to the U.K. in 2017 where she has been a citizen since 1990. Although Sudan is a dangerous country with a history of state sponsorship of terrorism, there is no record evidence that it has the infrastructure or the ability to intimidate, threaten, or otherwise coerce its expatriates living abroad. Applicant’s sister who lives in the U.K does not generate a security concern.

Applicant’s other sister who returned to Sudan from the U.K in 2005 held a prominent job in the government. However, she lost that job in 2017, and Applicant lost touch with her. He has not known her whereabouts since then. Because the potentially applicable disqualifying conditions under Guideline B (AG ¶¶ 7(a) and 7(b)) are predicated on contacts or connections with foreign people, neither are applicable for this sister.

Although Applicant is not close to his mother-in-law, he is vulnerable to coercion through his wife. This risk of coercion is heightened because of the dangerous, chaotic nature of Sudan and its history of sponsoring terrorism, and abusing human rights. AG ¶ 7(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,” applies.

Applicant has lived in the United States for more than 35 years, attending college, raising his family, immersing himself in the community, actively attending church and participating in volunteer activities. He has worked as a translator for much of the past 20 years, supporting the U.S. interest in various places, including combat zones where he has come under hostile fire in support of U.S. troops. Under these circumstances, I am confident that “there is no conflict of interest, either because [his] loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or [he] has such deep and longstanding relationships and loyalties in the United States, that [he] can be expected to resolve any conflict in the U.S. interest.” (AG ¶ 8(b)) In sum, Applicant has mitigated the foreign influence security concerns.

Guideline E, Personal Conduct

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” (AG ¶ 15) The alleged circumstances of Applicant’s dismissal from his job in 2012 raise the issue of whether AG ¶16(d), “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information,” applies.

Applicant admits that he was terminated from his job in 2012, but denies the reasons for the termination alleged in the SOR. He was not notified of the reasons for his dismissal when it occurred, and was unaware of his ex-employer’s basis for firing him until he applied for a security clearance in 2017. Perhaps Applicant was engaging in some of the conduct that led to his removal, as alleged. Specifically, it appears from the record that mingling with sources in the field, one of the stated reasons for firing Applicant, was not only tolerated by his previous command, but encouraged as a strategy to build rapport in the community. Perhaps Applicant’s employer manufactured these allegations as a pretense for the new base commander to replace him with a translator whom he preferred, as Applicant suggests. Whatever may be the case, there is insufficient evidence in light of Applicant’s denial to draw any negative security inferences related to his 2012 employment dismissal. I conclude that AG ¶ 16(d) applies, but is mitigated by AG ¶ 17(f), “the information was unsubstantiated” Applicant has mitigated the personal conduct security concern.

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 applicant’s conduct and all the 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.

I weighed the character that Applicant displayed in working for the U.S. as a translator. Moreover, in assessing his personal conduct, I concluded that the allegations leading to his discharge from a job in 2012 were not insignificant, but were an anomaly given the entirety of the record documenting the overwhelmingly positive assessments of Applicant's character and his job performance throughout his whole career. I conclude Applicant has mitigated the security concerns.

Formal Finding

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 B:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc Curry
Administrative Judge