



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



In the matter of:)	
)	
)	ISCR Case No. 19-01580
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

04/29/2020

Decision

CERVI, Gregg A., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 6, 2018. On September 3, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline F (Financial Considerations). The action was taken under Executive Order (Exec. Or.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Applicant responded to the SOR on October 4, 2019, and initially requested an administrative determination. He then retained counsel, and on December 12, 2019, he amended his response and requested a hearing before an administrative judge. On December 9, 2019, Department Counsel amended SOR ¶ 1.b to correctly allege Applicant's siblings in Sudan. Applicant admitted the amended allegation at the hearing. The case was assigned to me on January 8, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 9, 2020, scheduling the hearing for February 11, 2020.

I convened the hearing as scheduled. The Government's Request for Administrative Notice for the Republic of the Sudan and discovery letter, were appended to the record as Hearing Exhibits (HE) I and II, respectively. I admitted Government Exhibits (GE) 1 through 6 in evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AE) A through T, which I admitted in evidence without objection. The record was held open pending additional documents to be submitted by February 21, 2020. Those additional documents were submitted by Applicant within the appropriate time, marked collectively as AE U, and admitted without objection. DOHA received the hearing transcript (Tr.) on February 24, 2020.

Procedural Ruling

Request for Administrative Notice

Department Counsel's request that I take administrative notice of certain facts about the Republic of the Sudan was included in the record as HE I. Applicant did not object. I have taken administrative notice of facts contained in HE I, updated and supplemented with publicly available documents, and summarized below.

Republic of the Sudan

Sudan established independence from joint administrative rule by Egypt and the United Kingdom in 1956. In 1993, the United States designated Sudan a State sponsor of terrorism after the Sudanese government established links with international terrorist organizations. Sudan has harbored elements of the most violent terrorist organizations in the world including; Hamas; Abu Nidal Organization; Palestinian Islamic Jihad; and Lebanese Hizballah. U.S. courts have established that the Sudanese government was responsible for the October 2000 attack on the USS Cole (DDG 67), and materially financed the al Qaeda terrorists responsible for bombing the U.S. embassies in Kenya and Tanzania on August 1998.

The United States and Sudan entered into a bilateral dialogue on counterterrorism in May 2000. Sudan has provided concrete cooperation against international terrorism since the September 11, 2001 attacks on the United States. However, although Sudan publicly supported the international coalition actions against the al Qaida network and the Taliban in Afghanistan, the government criticized the U.S. strikes in that country, and opposed a widening of the effort against international terrorism to other countries. Sudan remains on the state sponsors of terrorism list.

In April 2019, the Sudanese army announced the overthrow of the government of President Bashir, and the establishment of a transitional military council. Previously, Sudan was a republic with power concentrated in the hands of authoritarian President Bashir and the National Congress Party, which had maintained nearly absolute political authority in Sudan. In August 2019, the ruling military council and civilian opposition alliance signed a power-sharing deal as the "Sovereignty Council," a joint civilian-military-executive body consisting of six civilians and five generals. The Council is led by the military, but is intended to transition to civilian leadership in May 2021 after elections. General Burhan serves as both chief of state and head of government.

The United States acknowledged the ouster of Bashir and his regime. On August 21, 2019, a former United Nations economist, Abdalla Hamdok, was designated Prime Minister. The U.S. Department of State noted this created the opportunity to forge a new political order and social contract in Sudan. Prime Minister Hamdok and the civilian-led transitional government were commended for representing civil society, efforts to deliver peace, justice, freedoms, equality, and respect for human rights to the Sudanese people. Additionally, the new government has promised to compensate the victims of the embassy bombings and the attack on USS Cole. In March 2020, Hamdok survived an assassination attempt in Khartoum.

Significant human rights issues under the former Bashir government included: unlawful or arbitrary killings; forced disappearance; torture; and arbitrary detention, all by security forces; harsh and life-threatening prison conditions; political prisoners; arrests and intimidation of journalists, censorship, newspaper seizures, and site blocking; substantial interference with the rights of peaceful assembly and freedom of association, such as overly restrictive nongovernmental organization laws; restrictions on religious liberty; restrictions on political participation; widespread corruption; lack of accountability in cases involving violence against women; trafficking in persons; outlawing of independent trade unions; and child labor. Respect for human rights, in particular fundamental freedoms of expression, assembly, and religion, greatly improved after the civilian-led transitional government took power.

In Darfur and the Two Areas, paramilitary forces and rebel groups continued to commit killings, rape, and torture of civilians throughout the year. Local militias maintained substantial influence due to widespread impunity. There were reports of both pro-government and anti-government militias looting, raping, and killing civilians. Intercommunal violence spawned from land tenure disputes and resource scarcity continued to result in civilian deaths, particularly in East, South, and North Darfur.

Following Bashir's fall, the Transitional Military Council (TMC) initially refrained from attacks on peaceful protesters. However, on April 11, 2019, a U.S. travel advisory was issued to refrain from travel to Sudan due to crime, terrorism, civil unrest, kidnapping, and armed conflict, and non-emergency U.S. government employees were ordered to depart from Sudan. On June 3, 2019, security forces dispersed the two-month-long sit-in of tens of thousands of peaceful demonstrators in Khartoum. In addition to excessive use of force, there were reports of widespread rapes as well as reports of numerous protesters being thrown into the Nile River alive and left to drown. The TMC reported 87 dead and

168 wounded, while most civilian groups tallied almost 130 dead and 700 wounded. At the time, the U.S. Embassy advised American personnel to shelter in place at home.

Findings of Fact

The SOR, as amended, alleges Applicant's three sisters, brother, half-brother, half-sister, and mother-in-law are residents and citizens of Sudan. It also alleges three delinquent debts totaling \$19,897, including a line of credit, a personal loan, and a credit card debt. Applicant admitted the Guideline B allegations and denied the Guideline F allegations, with comments and explanations.

Applicant is 64 years old. He was born in Sudan, entered the United States in 2000, and naturalized as a U.S. citizen in 2008. He married in 1984. His spouse was born in Sudan, and became a naturalized U.S. citizen in 2010. They have four adult children, all of whom live in the United States. His two daughters are U.S. citizens, and his two sons are permanent U.S. residents. Applicant received a bachelor's degree in 1981, and has been employed as a linguist for a government contractor since March 2019. He primarily works for the U.S. Army in Iraq. He drives a taxi when between contracting jobs. He has never held a security clearance.

Applicant has three sisters that are citizens and residents of Sudan between the ages of 75 and 85. He testified that they are not educated and suffer from bad health. He speaks to them about once or twice per year. Applicant's brother is a resident and citizen of Sudan. He does not know what his brother does for a living, and last spoke to him about eight months ago. Applicant reported in his 2018 counterintelligence screening that his brother was unemployed. Applicant also has a half-brother and half-sister that are citizens and residents of Sudan. He spoke to them about eight months ago, and his half-brother is sick and bedridden. Applicant last saw them in 2015 when he visited Sudan. Applicant's mother-in-law is a citizen and resident of Sudan. She is 85 years old, and is also bedridden with heart problems. Her children care of her. Applicant's spouse has contact with her mother over social media, and speaks to her about every six months to a year. None of Applicant's family members have ties to the Sudanese government. Once Applicant applied for a security clearance, he reduced contact with his family in Sudan, and he does not have property or financial interests in Sudan.

Applicant moved to the United States for a better life for his family, and education for his children. He supported his children's education while driving a taxi from 2003 to 2017. In 2017, he was unemployed for about four months while undergoing eye and neck surgery, and remained underemployed as the taxi business was overcome by ride-sharing services. Applicant stated that he loves the United States, and his immediate family live in the United States. His children's education and occupations include medical doctor, chemist, nurse, and human resource specialist. He is a loyal U.S. citizen, and considers the United States his home.

Applicant incurred three debts as a result of medical procedures, unemployment, and underemployment. He fell behind on debts when he lost income after being unable to drive a taxi after his surgeries, and with the decline of the taxi business. He hired a

debt relief company in 2017, received financial counseling, and resolved the debts. One debt was settled and paid on a payment plan as a result of litigation, and two others were paid in September and November 2019. Applicant owns a home and is current on his mortgage and expenses. He earns about \$80,000 per year, and his spouse earns about \$21,600 per year. His February 2020 personal financial statement shows a monthly net remainder of \$3,114. He has bank savings valued at about \$15,000.

Policies

“[N]o 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 applicants 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 § 2.

National security eligibility 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, an administrative judge applies these guidelines 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed

therein and an applicant's security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

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.

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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist

activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant’s three sisters, brother, half-brother, half-sister, and mother-in-law are citizens and residents of Sudan. Sudan is a country undergoing political change, but with a history of support for terrorism, human rights abuses, and authoritarian governments. AG ¶ 7(a) applies.

AG ¶ 8 provides conditions that could mitigate security concerns. 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.

Applicant was born in Sudan. He entered the United States in 2000 and naturalized as a U.S. citizen in 2008. His spouse was born in Sudan, and naturalized as a U.S. citizen in 2010. They have four adult children, all of whom live in the United States. Applicant’s three sisters in Sudan are elderly, not educated, and suffer from bad health. Applicant’s brother in Sudan is relatively estranged from Applicant except for rare contact. Applicant has occasional contact with his half-brother and half-sister in Sudan. Applicant’s mother-in-law in Sudan is elderly and in poor health. Applicant’s spouse has contact with her over social media, and speaks to her about every six months to a year. Applicant has occasional but not frequent contact with his family members in Sudan, and has limited his contact once he realized the security concerns raised by it. None of Applicant’s family members have ties to the Sudanese government, and he does not have property or financial interests in Sudan.

Applicant has served as a contract linguist in support of the U.S. Army in Iraq. He has lived and worked in the United States for 20 years. He raised a family of educated and successful children, and owns a home in the United States. His citizenship, loyalty,

financial interests, and significant close family ties are in the United States. He has minimal contact with relatives in Sudan, and considers the United States his home. AG ¶¶ 8(a) and (b) apply.

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
- (c) a history of not meeting financial obligations.

Applicant incurred several delinquent debts beginning in 2017 due to medical needs, unemployment, and underemployment. The record evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20, and I considered all of them. The following are potentially applicable:

- (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 supported his children's education while driving a taxi from 2003 to 2017. In 2017, he was unemployed for about four months while undergoing eye and neck surgery, and remained underemployed as the taxi business was overcome by ride-sharing services. He resolved his debts through diligent work and tenacious efforts. He obtained counseling and the services of a credit repair company, and resolved his debts. He has a solid personal balance sheet, and a substantial monthly net income remaining after paying expenses. I believe Applicant has overcome his financial problems and additional delinquencies are unlikely to recur. AG ¶¶ 20(b), (c), and (d) apply.

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. After weighing the disqualifying and mitigating conditions under these guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence and financial considerations security concerns. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant his 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 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 F:

FOR APPLICANT

Subparagraph 2.a – 2.c:

For Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge