



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



In the matter of:)
)
) ISCR Case No. 19-01688
)
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*
02/24/2020

Decision

BENSON, Pamela C., Administrative Judge:

Applicant’s longstanding ties and strong devotion to the U.S. mitigate the foreign influence security concerns raised by his familial relations in Sudan. Clearance is granted.

History of Case

Applicant submitted a security clearance application (SCA) on August 9, 2017. On July 15, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence). 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 August 15, 2019, and requested a hearing before an administrative judge. On September 25, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 13, 2019. I was assigned to the case on September 26, 2019. I convened the hearing as scheduled, and Applicant testified. Government’s Exhibits (GE) 1 through 5, and Applicant’s Exhibits (AE) A through C were admitted without objection. Applicant

corrected some inaccurate information reported in GE 2, GE 3, and GE 4. I received the completed transcript (Tr.) on December 3, 2019.

Administrative Notice

I took administrative notice of facts concerning Sudan. Those facts are set forth in the Government's Request for Administrative Notice for South Sudan. (GE 5) 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 denied SOR ¶¶ 1.a, 1.b, and 1.c. He admitted SOR ¶¶ 1.d, and 1.e, and attached three documents to his SOR response. (See AE A-C)

Applicant is 56 years old. He was born in Sudan and is a member of the Zaghwa tribe. He has been married since 2007, and has two children, ages 8 and 12. Applicant is sponsored by a government contractor for a linguist position in Kuwait or Iraq, with his employment contingent on the issuance of a DOD security clearance. He is a dual citizen of Sudan and the United States. Applicant's employer asked him to surrender his expired Sudanese passport. At the hearing, Applicant avowed that he is loyal to the U.S., the country that ultimately saved his life. He does not own any property or bank accounts in Sudan, and only travels with his U.S. passport. (Tr. 58-59, 64-70, 72-73, 80; GE 1, GE 2, GE 4)

Applicant left Sudan when he was 19 years old to attend college in the Soviet Union, and was able to avoid conscripted military service in the Sudanese military. He obtained his bachelor's degree in 1988, master's degree in 1993, and his doctorate in international law in 1997. He moved to Dubai in 1998. Applicant worked for the government of the United Arab Emirates (UAE) for approximately two years before he became a partner in other businesses. In 2003, Applicant became a human-rights activist in Dubai, after the genocide campaign started in the Sudanese city of Darfur, and the Sudanese government targeted mainly three African tribes, including his own tribe. He worked diligently to establish a network within the international community and inform them of the needless slaughter of innocent people. (Tr. 12, 33-36; GE 2, GE 4)

Applicant soon became a target for the government of Sudan, not only for being a member of the Zaghwa tribe, but also for being a vocal human-rights activist. The Sudanese government requested that the UAE government arrest and detain Applicant.

During his first arrest in 2008, the UAE security agency held him in jail for three weeks, and required him to be interviewed daily for about ten hours each day. He was released only after Applicant's wife went to the U.S. Consulate in Dubai to seek assistance. In early 2009, about two months after his release, Applicant was arrested a second time. He was held for ten days in a detention center. He was arrested a third time in 2009. He was held in captivity for five or six months, facing possible deportation to Sudan. During his stay in jail, U.S. Homeland Security and United Nations (UN) personnel took him to the UN building in Abu Dhabi, interviewed him, and he was released from captivity. There was a strong U.S. presence in the Middle East at the time taking action to improve the misplaced citizens of the Sudan situation. (Tr. 37-44; GE 2, GE 4)

In December 2009, Applicant arrived in the United States as a political refugee. In May 2015, he and his wife became naturalized U.S. citizens. Applicant returned to Sudan from December 2016 to January 2017 to visit his elderly father. Even though it was risky to return to Sudan, Applicant maintained daily contact with the U.S. embassy in Khartoum. Applicant was not detained or interviewed by the Sudanese government during this travel. (Tr. 46-48; GE 1, GE 2, GE 4)

SOR ¶ 1.a alleges Applicant's father is a citizen and resident of Sudan. Applicant denied this allegation since his father passed away on February 26, 2019. (SOR response; Tr. 56; AE A)

SOR ¶ 1.b alleges Applicant's sister, a citizen and resident of Sudan, serves as the Senior Legislative Advisor for the Sudan National Legislative Counsel. Applicant denied this allegation in his SOR response. He admitted at the hearing that his sister has been employed by the Sudanese government for 25 years, with her last five years of employment with the Sudanese Legislative Council. His sister had been an elected member of the ruling party until the military overthrew the Sudanese government in 2019. She is now barred from government service. Applicant had repeatedly warned his sister over the years that there will come a time that she and the corrupt government will be held accountable for their crimes against innocent people. Since the 2019 revolution, Applicant admitted that she could be in some danger for her past involvement with the corrupt Sudanese government. He regularly communicates with his sister through social media, and no action has yet been taken against her. He stated that if she is held answerable for her crimes, as a brother he would be sad, but as a human rights activist, Applicant fully understands the possibility that his sister may face charges one day. (Tr. 51-57, 62-63; GE 2-4)

SOR ¶ 1.c alleges Applicant's brother-in-law, a citizen and resident of Sudan, and serves on the Sudanese Legislative Council. Applicant denied this in his SOR response. He admitted, however, that his brother-in-law had been on the Sudanese Legislative Council for approximately the last six years, until the 2019 military coup. His brother-in-law is now working as a lawyer for a law firm in Sudan. He is also barred from Sudanese government service. (Tr. 51-57; GE 2-4)

SOR ¶ 1.d alleges Applicant's cousin is employed as a police officer in Sudan, and he is also a resident and citizen of Sudan. Applicant admitted this information and also disclosed that he communicates with his cousin weekly through social media. His brother is a local police officer, and is not involved in the politics or government of Sudan. (Tr. 51-52; GE 2-4)

SOR ¶ 1.e alleges Applicant's half-sister is a citizen and resident of Sudan. Applicant admitted this allegation and stated that she lives in northern Darfur, which is not currently a safe place. He met her for the first time in 1997, and again in 2016 when he traveled to Sudan. His contact with her is sporadic. (Tr. 49-51; GE 2-4)

After Applicant arrived in the U.S., he started teaching U.S. public policy part-time as an adjunct faculty at different universities. He is grateful to have civil rights in the U.S, and he is currently involved in human-rights campaigns for Sudan. He feels a moral obligation to defend the rights of Sudanese citizens who have been oppressed by the government for many years. He intends to continue to be a human-rights advocate not only for Sudan, but for other countries with serious human rights violations. (Tr. 59, 63-65)

Administrative Notice – Sudan

The United States reestablished diplomatic relations with Sudan in 1972, however, Sudan's established links with international terrorist organizations resulted in the 1993 designation of Sudan as a State Sponsor of Terrorism, and the suspension of U.S. Embassy operations in 1996. The U.S. Embassy was reopened in 2002, and remains open today.

In July 2011, 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.

Sudan was a Republic, however, in April 2019, the Sudanese military overthrew the government of President Omar Hassan Al Bashir and established a transitional military council. The previous government of Sudan concentrated power in the hands of

an authoritarian government and the National Congress Party, which maintained nearly absolute political power. There is a national state of emergency in effect across Sudan which give security forces greater powers of arrest and incarceration. The detention of foreigners has been reported and other human rights issues include unlawful or arbitrary killing, forced disappearance, torture, and arbitrary detention. The U.S. State Department Travel Advisory for Sudan is: Level 4 - do not travel.

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 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.

As noted, a heightened risk is associated with 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 Sudan is far deeper and more than casual, as previously reported. Applicant maintains frequent and regular contact with family members in Sudan, especially with his sister and cousin. 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 Sudan. Applicant’s relationship with his sister, brother-in-law, cousin, and half-sister 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 access to classified information.” ISCR Case No. 07-13739 at 4; App. Bd. Nov. 12, 2008. 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. 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.

Applicant’s strong and longstanding ties to the United States raises favorable inferences regarding his suitability. He has no assets in Sudan. None of his family members are currently involved in Sudanese politics or employed by the Sudanese government. He understands a possibility exists in which his sister or brother-in-law may be held accountable for their past involvement with the corrupt Sudanese government. If that would happen, he would support the inquiry. The government has no burden of showing that Sudan officials have attempted to exploit Applicant; however, if such evidence existed, it would cause grave security concerns about foreign influence.

Applicant is a loyal U.S. citizen. His wife and two children are U.S. citizens. All of his assets are in the United States. His oath of allegiance to the United States, his honesty in self-reporting his foreign connections, and the candor he exhibited at the hearing are sufficient to mitigate the security concerns raised by Applicant’s familial connections to Sudan. He teaches U.S. public policy at different universities and is grateful to have civil rights. I find that Applicant’s ties to Sudan are outweighed by his deep and long-standing relationships and loyalties in the United States. His closest family, life, and assets are 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

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 Guideline B 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 context of the whole person and the heightened risk associated with Sudan, Applicant's longstanding ties and loyalty to the U.S. 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.e:	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