



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



In the matter of:)
)
-----) ISCR Case No. 19-00657
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Joseph D. Jordan, Esq.

04/27/2021

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He met his burden to present sufficient evidence to explain and mitigate his history of financial problems. But he did not meet his burden to present sufficient evidence to explain, extenuate, or mitigate the security concern for foreign influence based on family ties, chiefly his spouse, to Sudan. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on September 20, 2017. (Exhibit 1) This document is commonly known as a security clearance application. He provided additional information during a background investigation. (Exhibits 2, 3, 4, and 8) Thereafter, on May 1, 2019, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified

information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline B for foreign influence due to his family ties to Sudan, and under Guideline F for financial considerations due to his history of financial problems.

Applicant answered the SOR and provided supporting documentation, and his answer was considered to be complete in March 2020. He admitted all the factual allegations under both security guidelines. He also requested an in-person hearing before an administrative judge. Thereafter, in July 2020, he retained legal counsel to represent him in this proceeding.

The hearing took place as scheduled on November 5, 2020. Applicant appeared in person after traveling from his overseas duty location in Kuwait. Both Department Counsel and Applicant's counsel offered documentary exhibits, which were admitted as Government Exhibits 1-9 and Applicant's Exhibits A-R. Applicant was called as a witness and was subject to cross-examination by Department Counsel.

I took administrative or official notice, which is similar to judicial notice, of certain facts concerning the country of Sudan per Department Counsel's written request. (Exhibit 9) In addition, on my own motion, I took administrative notice of two matters concerning Sudan. The first was that the President of the United States, on October 19, 2020, announced that he intended to request that Sudan be removed from the State Department's list of State Sponsors of Terrorism. The second was that Sudan had recently entered into a peace agreement with the country of Israel in an effort to normalize relations with that country. (Tr. 12-13) The hearing transcript (Tr.) was received on November 13, 2020.

Findings of Fact

Applicant is a 65-year-old employee who is seeking to obtain a security clearance for his job as linguist, translator, and interpreter (Arabic) for a company that does business in the defense industry. He has worked for this company since 2017. His work is in support of the U.S. armed forces in the country of Kuwait. Before his current job, he was unemployed from March 2017 to about September 2017. Before that, he worked as a security guard for different firms during 2011-2017. He also had a period of unemployment from November 2010 to July 2011.

Applicant was born in Sudan to Sudanese parents. He completed high school in Sudan in 1980, and then earned a diploma in Arabic Language and Islamic Studies from a university in Sudan in 1985. He continued his education in the United States where he attended two different educational institutions.

Applicant came to the United States in 2001 as a refugee. (Tr. 15-16) He felt compelled to depart Sudan in 1990 because he believed he would be targeted as an educated Sudanese African as the regime was Sudanese Islamic. (Tr. 36-37) He lived in Egypt during 1990-1994, in Saudi Arabia during 1994-1999, and again in Egypt during 1999-2001. He became a naturalized U.S. citizen in 2006, and his most recent

U.S. passport was issued in 2017. (Exhibit 1) He explained that it was his “dream” to become a U.S. citizen and he is very proud of doing so. (Tr. 16) He has no family members in the United States, as they are all presently living in Sudan as citizens of that country.

Applicant’s parents are deceased. His father passed away many years ago and his mother remarried. His mother passed away more recently in January 2019. (Exhibits D and R) His two brothers and sister are citizens of and residents in Sudan. The same is true for his five half-brothers and two half-sisters. Applicant is also married to a citizen of Sudan, and she along with her mother and father reside in Sudan. He traveled to Sudan from January 2010 to April 2010; from April 2011 to July 2011; from March 2017 to July 2017; and mostly recently from December 2019 to January 2020. (Exhibit 2; Tr. 30-31)

One brother was a senior police officer with the Sudanese Ministry of Interior but retired several years ago. (Tr. 19-20) Applicant spoke with him by telephone in January 2019 when their mother passed away to express his condolences. (Tr. 20) He also spoke with his other brother at the same time. Before their mother’s passing, he spoke with the latter brother twice a month because that brother was taking care of their mother. (Tr. 20-21) He has not spoken with his two brothers since January 2019. Applicant’s sister was a member of the Sudanese Parliament during the Bashir government, but she is no longer a member after the regime change. (Tr. 21-22) He spoke with his sister when their mother passed, but otherwise had not spoken with her in ten years. (Tr. 22) His sister is now a housewife. (Tr. 34)

Concerning his five half-brothers, Applicant is aware that one is employed as a customs police officer with the Sudanese Ministry of Interior. (Tr. 23) He is unaware of the employment activities of the other half-brothers. (Tr. 34-35) He is also aware that his two half-sisters are housewives as they have husbands and children of their own. (Tr. 35) He has little to no communication or relationships with his half-siblings. (Tr. 23-24)

Applicant married a Sudanese woman in 2014. (Exhibit 1) She gave birth to a son in 2016, but the child passed away after a year due to malaria. (Tr. 29-30, 40-41) He has no other children from the marriage. His spouse continues to live in Sudan as a housewife and he provides her financial support of about \$200 monthly, which is sufficient to meet her needs. He retained the services of an immigration lawyer who, as of October 2020, anticipated filing an immigration petition soon despite the current restriction of immigration from Sudan. (Exhibit E) In addition to his spouse, Applicant’s mother-in-law and father-in-law are also citizens of and residents in Sudan.

Applicant does not have business, financial, or property interests in Sudan. He has checking and savings accounts with a U.S. financial institution but no other financial accounts here. He does not own a home or other real estate in the United States. He is a registered voter and has exercised that right. He also has a driver’s license issued by his state of residence in the United States. He is using a friend’s address as his current residential address in the United States. (Tr. 38-39)

Concerning the country of Sudan, the relevant facts are outlined in Department Counsel's request for administrative notice. (Exhibit 9) Of particular note is that Sudan was designated a State Sponsor of Terrorism in 1993 and remained so until its removal from the State Department's list in December 2020. The Sudanese government was overthrown in April 2019, and the transition to a new government was not entirely peaceful. Sudan's removal from that list represents a fundamental change in the U.S.-Sudan relationship and allows for the United States to provide more robust support for Sudan. Sudan has also had a dismal human-rights record.

The SOR alleged and Applicant admitted a history of financial problems. In addition to his admissions, the factual allegations in the SOR are established by the documentary evidence. (Exhibits 5-7) The SOR concerns seven delinquent debts (charged off or in collection) in amounts ranging from \$85 to \$6,137 for a total of about \$9,462. He attributed the delinquent accounts to the low income he earned working as a security guard while at the same time paying for educational expenses. (Tr. 28-29) He presented reliable documentation showing that he paid or settled the seven delinquent accounts during 2019-2020. (Exhibits I, J, K, L, M, P, and Q). Those matters are found to be resolved.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.¹ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."² Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.³ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

² 484 U.S. at 531.

³ 484 U.S. at 531.

⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁵ Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁶

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is set forth in AG ¶ 18 as follows:

Failure or inability 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. . . .

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 20(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; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁶ Directive, Enclosure 3, ¶ E3.1.14 and E3.1.15.

The evidence supports a conclusion that Applicant has a history of financial problems that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply to this case.

Turning to the matters in mitigation, Applicant's financial problems are related to the low income he earned working as a security guard while at the same time paying for education expenses. He did not deliberately shirk his financial responsibilities. Once he started earning a higher income, he was able to pay or settle the seven delinquent accounts at issue in the SOR. Given the circumstances, the mitigating conditions at AG ¶ 20(b) and AG ¶ 20(d) apply in Applicant's favor. The security concern under Guideline F is decided in Applicant's favor.

The gravamen of the SOR under Guideline B for foreign influence is whether Applicant's ties to Sudan should disqualify him from access to classified information. Under Guideline B for foreign influence, the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern is set forth in AG ¶ 6 as follows:

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 a security concern under AG ¶ 7. The following are potentially applicable in this case:

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; and

AG ¶ 7(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 starting point for the analysis is the country of Sudan. In light of the facts and circumstances described in Department Counsel's request for administrative notice, the

heightened-risk element is satisfied. Accordingly, given Applicant's family ties to Sudan, chiefly his spouse, the Government has established its case under Guideline B. The above disqualifying conditions are raised by the evidence.

The guideline provides that certain facts and circumstances may mitigate foreign influence concerns. Given the evidence here, I considered the following mitigating conditions:

AG ¶ 8(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

AG ¶ 8(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.

Sudan's relationship with the United States and the heightened risk it presents place a heavy burden on Applicant to mitigate the security concern. With that said, Applicant has indicators of a mature, stable, responsible, and trustworthy person. He has a long record of employment in the United States. He is not wealthy, but his financial interests are in the United States. He traveled at his own expense from his overseas duty location for the hearing in the case. He was serious at the hearing. He appears to have cooperated fully and provided truthful information during the security clearance process.

I have considered the totality of Applicant's family ties to Sudan, chiefly his spouse who he supports financially, in light of the heightened risk presented by the country of Sudan, and I remain concerned. The entirety of his family ties are to Sudan while he has no family ties to the United States. At the same time there appear to be no circumstances regarding Applicant personally that give rise to doubt about his suitability for a security clearance, but that by itself does not carry sufficient weight.

Given the totality of facts and circumstances, I cannot conclude that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Sudanese government or his family members who are citizens of and residents in Sudan. Likewise, I cannot conclude that there is no conflict of interest. AG ¶ 8(a) and AG ¶ 8(b) are not fully applicable.

Following *Egan* and the clearly consistent standard, I have doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighted the evidence

as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c – 1.i:	Against Applicant
Paragraph 2, Guideline F:	For Applicant
Subparagraphs 2.a – 2.g:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility denied.

Michael H. Leonard
Administrative Judge