



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



In the matter of:)
)
) ISCR Case No. 19-01891
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

05/12/2021

Decision

HARVEY, Mark, Administrative Judge:

Applicant refuted the allegations made under Guidelines E (personal conduct) and F (financial considerations); however, Guideline B (foreign influence) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On April 9, 2017, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (SF 86) or security clearance application (SCA). (GE 1). On December 17, 2019, the Department of Defense (DOD) Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guidelines E, F, and B. (HE 2)

On June 1, 2020, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On October 8, 2020, Department Counsel was ready to proceed. On October 21, 2020, the case was assigned to me. On February 25, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for April 20, 2021. (HE 1)

Department Counsel provided eight exhibits, and Applicant objected to two exhibits. Six exhibits were admitted into evidence without objection. (Transcript (Tr.) 10; Government Exhibit (GE) 1-GE 6) Applicant objected to the admissibility of Applicant's Office of Personnel Management (OPM) personal subject interviews (PSI) because of the lack of an authenticating witness. (Tr. 10) Applicant said he could not remember what he told the OPM investigator, and he would not confirm the accuracy of the OPM PSI summaries. (Tr. 91-94) I sustained Applicant's objection and concluded his OPM PSIs were inadmissible; however, the two exhibits are included for the record. (Tr. 106; GE 7, GE 8 (not admitted)) At his hearing, Applicant provided 14 exhibits which were admitted without objection. (Tr. 11-12; AE A-AE N) On April 27, 2021, Applicant provided eight exhibits, which were admitted without objection. (AE O-AE V) The transcript was received on April 28, 2021. The record closed on April 30, 2021. (Tr. 119)

Legal Issues

Department Counsel moved to amend the SOR adding ¶ 3.g to include the allegation that Applicant's spouse is a citizen and resident of Sudan. (Tr. 102) Applicant objected to the amendment due to lack of notice, and I sustained the objection. (Tr. 103) I indicated I would consider the information about his spouse for the five reasons specified by the Appeal Board. See *infra* pages 15-16.

Department Counsel requested administrative notice concerning Sudan. (Tr. 10; HE 4) Applicant did not object to Department Counsel's request for administrative notice, and I granted the motion. (Tr. 10-11)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually, administrative notice at ISCR 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).

Department Counsel's request for administrative notice is substantially quoted in the Sudan section with minor grammatical and punctuation changes, some omissions, and without footnotes.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at <https://ogc.osd.mil/Defense-Office-of-Hearings-and-Appeals/>.

Findings of Fact

In Applicant's SOR response, he admitted all of the SOR allegations with clarifications. (HE 3) He also provided mitigating information. (*Id.*)

Applicant is a 60-year-old U.S. citizen who seeks a security clearance. (Tr. 13, 31; GE 1) He was born in Sudan. (*Id.*) In 1995, he received a bachelor's degree in business studies in Sudan. (Tr. 31-32; AE L) He has served as a linguist in the Middle East since 2016. (Tr. 16) In 1993, he was married, and in 1998, he was divorced. (Tr. 32; GE 1 at 20) In 2019, he married a second time. (Tr. 19) If he receives a security clearance, he expects his annual income as a linguist to increase from \$74,000 to \$86,000. (Tr. 23)

Personal Conduct and Financial Considerations

SOR ¶¶ 1.a and 2.a allege that in March 2015, Applicant submitted an application for food stamps in which he falsely indicated he had less than \$100 in cash or in the bank. He traveled to the Middle East three times: (1) in May 2015; (2) from November to December 2015; and (3) from January to February 2016.

Applicant admitted that he completed a food stamp application in March 2015, which asked the following financial and employment-related questions: (1) "Will your household income be more than \$150 this month?"; (2) "Do you have more than \$100 in cash or in the bank?"; (3) "Is your income and ready cash this month more than your rent and utilities?"; (4) "What will be your total income this month?"; (5) "How much do you have in cash or the bank?"; (6) "What did you pay for housing (rent/utilities) this month?"; (7) "In the past two (2) months, did anyone stop working or cut back on their hours?"; (8) "Are you or anyone in your house working?"; and (9) "Did anyone sell, trade, or give away anything worth more than \$1,000 during the last three (3) years?". (GE 5 at 2-4) Applicant responded "no" to questions (1), (2), (3), (7), (8), and (9). He responded "0" to questions (4) and (5) and "\$150" to question (6). (Tr. 56, 62; GE 5 at 2-4)

Applicant's food stamp application also asked: "Does anyone own a car, truck or van? If yes, list Make, Model and Year below." (GE 5 at 4) Applicant answered "no." (*Id.*) He purchased a car in 2011 for about \$25,000. (Tr. 46-47, 94-95) He owned this vehicle from 2011 to June 2016, and he used it for part-time taxi services. (Tr. 47)

In 2014, Applicant and a friend went to Europe and purchased two trucks, which they sold in 2014 in the United Arab Emirates (UAE). (Tr. 64-66, 75-76) Applicant said he did not recall how much he contributed toward the purchase of the trucks, and he did not remember the sales prices. (Tr. 66-67) He could not remember whether they were sold for more or less than \$1,000. (Tr. 67, 77)

Applicant said in March 2015, he was told by his “representative” or government caseworker that he was entitled to food stamps and Medicaid because he “did not have a job at the time.” (HE 3 at 2) He “inadvertently overlooked the question regarding the amount of money [he] currently had. [He] did not intend to lie or commit fraud. . . . This incident was a simple mistake.” (*Id.*) At his hearing, he said “It’s a mistake because I didn’t know the question was like as in my -- like right as of now I had in my pocket a hundred dollars or not. So that’s kind of confuse at that time. . . . I didn’t know because maybe I was in a rush to just fill that form or I didn’t understand what it was in there.” (Tr. 21-22, 56-57) He said “I don’t remember but maybe could be a language barrier, maybe. I understand at that time what was written in there.” (Tr. 59) He said he could not remember what he was thinking at the time he completed the document in March 2015. (Tr. 60)

Applicant disclosed on his food stamp application that his mortgage payment was \$867 and his taxes were \$110; however, he wrote that his mortgage was in “default.” (GE 5 at 5) He was unsure when his mortgage was in default. (Tr. 104-105) He indicated on the food stamp application that he usually speaks English, and he wants services to be provided in English. (GE 5 at 8) He disclosed his employment as a linguist from 2007 to 2010 on his food stamp application; however, he did not disclose any employment from 2011 to 2015. (*Id.* at 12)

From 2007 to 2010, Applicant earned \$174,000 annually working as a linguist in Iraq. (Tr. 43-44) He said he could not remember how much money he had in his savings account when he left his linguist employment in 2010. (Tr. 44) He could not remember whether it was more than \$100,000, between \$100,000 and \$50,000, or less than \$50,000. (Tr. 45-46) From 2012 to 2016, he worked on call as a medical translator and earned \$25 an hour. (Tr. 48-50; AE D) He could not remember how much he worked as a medical translator. (Tr. 51) He was unsure if he put the income from being a medical translator on his income tax return. (Tr. 51) From May 2012 to January 2015, Applicant worked for a part-time taxi service. (Tr. 52) He did not remember how much he worked or how much he earned in his part-time taxi service employment. (Tr. 52-53)

As to the trips to the Middle East, he said he visited his sister who was ill, and she died in 2019, and his son who was in the UAE. (Tr. 22; HE 3 at 2) He paid for the trips using a credit card. (Tr. 73; HE 3 at 2) He said he did not remember whether he had money in the bank when he traveled overseas from November 2014 to January 2015. (Tr. 74)

From 2009 to April 9, 2017, Applicant traveled outside the United States to 50 foreign countries mostly in the Middle East. (GE 1 at 35-101) The overseas trips from May 2014 to February 2016 are as follows. From May to June 2014, Applicant traveled to the UAE for 21 to 30 days. (*Id.* at 68) From August to September 2014, he traveled to the UAE for 21 to 30 days. (*Id.* at 69) In November 2014, he traveled to the UAE for one to five days. (*Id.* at 71) From November to December 2014, he traveled to Sudan for more than 30 days. (*Id.* at 72) From December 2014 to January 2015, he traveled to the UAE for 21 to 30 days. (*Id.* at 73) In May 2015, he traveled to Qatar for one to five days and to the UAE for one to five days. (*Id.* at 75-76) In November 2015, he traveled to Qatar for one to five days. (*Id.* at 77) From November to December 2015, he traveled to the UAE

for one to five days. (*Id.* at 78) From December 2015 to January 2016, he traveled to the UAE for one to five days. (*Id.* at 80) From January to February 2016, he traveled to Saudi Arabia for one to five days. (*Id.* at 81) In February 2016, he traveled to the UAE for one to five days. (*Id.* at 82)

From August 2014 to November 2016, Applicant received from \$189 to \$194 monthly from the food stamp program. (Tr. 69-70; GE 6 at 4-5) He did not remember whether the payments continued after November 2016. (Tr. 70) He did not remember telling the government to stop making the payments. (Tr. 70-71) The food stamp application indicates Applicant will need to “recertify” for benefits. (GE 5 at 2) There is no evidence that Applicant submitted a mid-certification or recertification for benefits. See Department of Human Services website, <https://dhs.dc.gov/service/recertification-benefits>.

Applicant’s May 8, 2021 personal financial statement indicates his total monthly income is \$4,200, and his net monthly remainder is \$1,500. (AE A) His primary debts are his mortgage (\$165,000), two credit cards (\$4,800 and \$4,500), and a personal loan from a bank (\$20,000). (*Id.*)

At most Applicant admitted that he made a mistake when he answered the question in the food stamp application when he said he did not have \$100 in cash or in his bank account. He did not admit that he had \$100 or more in cash or in his bank account. There is no admissible evidence about how much Applicant had in cash or in his bank account when he completed his food stamp application. The SOR did not allege, and there was no evidence that Applicant has any currently delinquent accounts or debts.

Foreign Influence

SOR ¶¶ 3.a, 3.b, and 3.c allege Applicant’s four brothers, two sisters, and son are citizens and residents of Sudan. Applicant’s son was born in 1995 in Sudan, and he continues to reside in Sudan. (GE 1 at 23) On April 9, 2017, Applicant said he communicated with his son on a monthly basis; however, his most recent communication was in February 2015. (GE 1 at 24) On May 7, 2017, he indicated he contacted his son 10 times a year. (GE 3 at 2) At his hearing, Applicant said he does not have any contact or relationship with his son, who is now 26 years old. (Tr. 15, 26-27) The last time he met with his son was in 2015 when Applicant went to the UAE. (Tr. 87)

In Applicant’s April 9, 2017 SCA, Applicant said he communicated with his four brothers as follows: (1) brother one: annually with his most recent communication in December 2014; (2) brother two: monthly with his most recent communication in March 2015; (3) brother three: monthly with his most recent communication in February 2014; and (4) brother four: quarterly with his most recent contact in February 2014. (GE 1 at 25-29) In his May 7, 2017 counterintelligence questionnaire, he indicated he communicated with two of his brothers 12 times a year. (GE 3 at 1) For the other two brothers, he did not indicate frequency of contact. (*Id.* at 2) At his hearing, he said he talked to one brother about a year ago but not to the others. (Tr. 26) He said he does not communicate with them because: “Just due [to] my job, you know, concerns I don’t talk to them anymore.

And I'm kind of busy and they're busy too. So then I told them now I have a different job requirement to stay away so I don't want to get in talk to them.” (Tr. 25) He talked to one brother possibly in 2016, because he needed help arranging his divorce. (Tr. 79, 81-82)

In Applicant's April 9, 2017 SCA, Applicant said he communicated with his two sisters quarterly with his most recent communications in December 2014. (GE 1 at 30-32) At his hearing, he said he has not talked to his sisters for about six years. (Tr. 25-26)

In Applicant's April 9, 2017 SCA, he said he traveled to Sudan as follows: (1) from November to December 2010 (at least 30 days); (2) from November to December 2011 (at least 30 days); (3) from November to December 2012 (at least 30 days); (4) from November to December 2014 (at least 30 days); (5) in September 2016 (one to five days); and (6) for three weeks in 2019. (Tr. 37-38; GE 1 at 42-43, 47-48, 55-56, 72-73, and 90-91)

SOR ¶¶ 3.d, 3.e, and 3.f allege: he provided about \$7,000 yearly from 2009 to present to his brother who is a citizen and resident in Sudan; he provided about \$200 yearly from 2009 to present to his sisters who are citizens and residents of Sudan; and he provided about \$3,000 yearly to his son who is a citizen and resident of Sudan.

At his hearing, Applicant said he provided about \$7,000 in 2009 to his brother in Sudan, and about \$200 in 2009 to his sisters in Sudan. (Tr. 27-28, 82-83) He gave another brother some money to “stand on his feet”; however, he did not remember when he gave him the money or how much he gave him. (Tr. 84) He provided about \$3,000 annually to his son, but stopped making payments. (Tr. 28) He did not remember when he stopped providing funds to his son. (Tr. 89) He could not remember when he gave money to his brothers and sisters. (Tr. 83-85)

Applicant's parents are deceased. (GE 1 at 21-22) In 2019, he married, and his 35-year-old spouse is a resident and citizen of Sudan. (Tr. 32-35; AE O; AE P) She lives with Applicant's uncle in Sudan. (Tr. 35) Since 2019, Applicant has provided \$15,000 in support to her. (Tr. 36-37) He has not been with her since he went to Sudan in 2019 for three weeks when they were married. (Tr. 37-38) She has never been to the United States, and he has applied for a permanent resident visa or green card to enable her to live in the United States. (Tr. 38-39; AE P; AE R; AE T; AE U; AE V) He reported his marriage to his employer. (AE S) He said he renounced his Sudan citizenship; however, he was unsure about how he renounced his citizenship. (Tr. 97-98) Sudan does not recognize dual citizenship, and Applicant's Sudan citizenship may have been involuntarily revoked when he obtained citizenship in the United States. Multiple Citizenship website, available at <https://www.multiplecitizenship.com/wscl/wsSUDAN.html>.

Applicant has significant connections to the United States. He immigrated to the United States in 1999. (Tr. 40) In 2004, he became a U.S. citizen. (Tr. 40; AE G) He uses a U.S. passport. (AE G) He has lived in a Middle Eastern country since 2016 working for a DOD contractor. (Tr. 41) He votes in the United States, and he pays United States and local taxes. (Tr. 20; AE J; AE K) He has about \$80,000 in U.S. bank and retirement accounts. (Tr. 20; AE H; AE I; AE J)

Applicant was exposed to death or serious injury while he served with U.S. armed forces in Iraq from 2007 to 2010. (Tr. 17) For example, he said in 2010, he left employment as a linguist because “a rocket hit the building” where he lived. (Tr. 17) It landed next to his room, but due to sandbags it did not explode. (Tr. 18)

Character Evidence

On March 18, 2021, an Army captain wrote that Applicant is an incredible asset to the mission. (AE M) “He always is in the right place, right uniform at the right time and works independently taking on additional duties and responsibilities as the situation requires. [He] is a team player and always places the mission before himself.” (*Id.*) He provided photographs of himself with U.S. military personnel which is an indication of having an excellent relationship with them. (AE F; AE N) Applicant’s program manager has known him since 2016 and describes Applicant as mature, intelligent, and self-motivated. (AE B) He contributes to mission accomplishment. (*Id.*) On May 7, 2020, an Army captain wrote that Applicant has a positive attitude and excellent work ethic. (*Id.*) Their statements support approval of his access to classified information. (AE B; AE M)

Applicant received a unit coin and certificate of appreciation for his contributions to the success of those units that received his support. (AE C) His resume described his work for DOD from 2007 to 2010 and 2016 to present. (AE D)

Sudan

On April 11, 2019, following months of protests, civil unrest, and a national state of emergency, the Sudanese army announced the overthrow of the government of President Omar Hassan al Bashir and the establishment of a transitional military council. Previous to this, Sudan was a republic with power concentrated in the hands of authoritarian President al-Bashir and the National Congress Party, which had maintained nearly absolute political authority in Sudan for three decades.

The transition to a new government was not entirely peaceful. On June 3, 2019, security forces violently dispersed protesters at a sit-in, killing and injuring hundreds. On June 5, 2019, the U.S. Department of State released the following: “The United States condemns the recent attacks on protesters in Sudan . . . We call on Sudan’s Transitional Military Council and the Rapid Support Forces to desist from violence and we call for resumed contact with the Forces for Freedom and Change with the aim of a civilian-led transition that leads to timely elections and free expression of the will of the Sudanese people.” U.S. Dept. of State, Press Statement: Situation in Sudan (June 5, 2019).

On June 6, 2019, the U.S. Embassy cited violence and civil unrest continuing in Khartoum and in cities across Sudan, resulting in local travel by U.S. government personnel being limited to minimal, officially approved movements only.

In September 2019, Sudan officially formed the civilian-led transitional government (CLTG). The CLTG is composed of a Sovereign Council, a Council of Ministers headed by the prime minister, and a Legislative Council. The 11-person Sovereign Council is

composed of six civilians and five military officers. On August 20, Dr. Abdalla Hamdok was sworn in as prime minister. Under the constitutional declaration, general elections are to be held in 2022. The country last held national elections (presidential and National Assembly) in 2015. Since the formation of the CLTG, large-scale protests have died down. Smaller, localized protests have continued with a focus on injustices committed by the Bashir regime and violence that took place during the protest period leading to the creation of the CLTG. Most of the protests have been nonviolent, but they often led to road closures by security forces and the protesters. At times, the security forces have used tear gas to disperse protestors.

Since 1993, the U.S. Secretary of State has designated Sudan as a State Sponsor of Terrorism for supporting international terrorist groups, including the Abu Nidal Organization, Palestine Islamic Jihad, Hamas, and Hizballah. The CLTG asserted it does not support terrorist organizations that were tolerated under the Bashir regime. The CLTG has taken steps to limit the activities of these terrorism organizations and worked to disrupt foreign fighters' use of the country as a logistics base and transit point. The Department of State assesses Khartoum as being a HIGH-threat location for terrorism directed at or affecting official U.S. government interests. Elements of ISIS, al-Qa'ida, and many other terrorist organizations recruit in Sudan. As of August 2020, the Department of State's travel advisory for Sudan was Level 3: Reconsider travel to Sudan due to crime, terrorism, civil unrest, kidnapping, and armed conflict.

Terrorist groups are still active in Sudan and have stated their intent to harm Westerners and Western interests through suicide operations, bombings, shootings, and kidnappings.

Despite the absence of high-profile terrorist attacks, ISIS facilitation networks appear to be active within Sudan. The newly appointed Minister of Religious Affairs and Endowments under the CLTG denied the existence of an official ISIS entity in Sudan but acknowledged that there were "extremists" linked to ISIS in the country. The Minister of Religious Affairs and Endowments also emphasized that his ministry would work on combating extremism, fighting terrorism and renewing school curricula to promote tolerance.

In 2003, non-Arabs in the western region of Darfur, who since 1990 have accused the government of systematic discrimination, marginalization, and oppression, rebelled against the government, protesting decades of political and economic neglect. The government responded with brutal force, including the use of Arab militias known as Janjaweed. In the ensuing conflict, more than 300,000 people were killed. To date, the conflict in Darfur has affected 4.7 million people, including more than 1.76 million internally displaced persons (IDPs) in need of humanitarian assistance. The United States characterized the government and affiliated militia attacks on civilians in 2004 as genocide.

In mid-2011, following South Sudan's independence, conflict broke out between the government and the Sudan People's Liberation Movement-North in Southern Kordofan and Blue Nile states. The conflict has severely affected or displaced more than

1.1 million people within the two areas and caused more than 300,000 people to flee to neighboring countries. The government of Sudan announced in January 2019 that it would continue indefinitely its unilateral cease fire, in effect since 2016, with armed rebels throughout the Blue Nile region and Southern Kordofan region. The Sudan People's Liberation Movement-North has also maintained its unilateral cessation of hostilities without a commensurate announcement.

Significant human rights issues under the Bashir government included: unlawful or arbitrary killings; forced disappearances; torture; and arbitrary detentions, all by security forces; harsh and life-threatening prison conditions; political prisoners; arrests and intimidation of journalists, censorship, newspaper seizures, and site blockings; substantial interference with the rights of peaceful assembly and freedom of association, such as overly restrictive nongovernmental organization (NGO) 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 CLTG took power.

Bashir government authorities did not investigate human rights violations by its security services or any other branch of the security services. However, the CLTG has launched a human rights investigation into the June 3, 2019 security force violations. In addition, the attorney general and security forces had agreed on a temporary process to remove immunity from security forces and government institutions involved in human rights violations.

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.

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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. See *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 ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility[.]

AG ¶ 16 lists one condition that could raise a security concern and may be disqualifying in this case: “(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to . . . award benefits or status”

SOR ¶ 1.a alleges that Applicant filed an application for food stamps containing a false statement that he had less than \$100 in cash or his bank account. Applicant said he could not remember how much money he had in his bank account. He said his trips to the Middle East at the time he completed his food stamp application were funded with a credit card. There is insufficient evidence of record that he had more than \$100 in cash or in his bank account when he completed the food stamp application to establish SOR ¶ 1.a. Applicant has a college degree, and he is a professional linguist. Applicant’s statements at his hearing that he was confused or misinterpreted the question are not credible. Nevertheless, the admissible evidence does not prove that his statement in his food stamp application about the amount of money he had at that time was false. The allegation in SOR ¶ 1.a is refuted.

Financial Considerations

AG ¶ 18 articulates the security concern for financial considerations:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

AG ¶ 19 includes one disqualifying conditions that could raise a security concern and may be disqualifying in this case. AG ¶ 19(d) states: “(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.”

SOR ¶ 2.a reiterates SOR ¶ 1.a in the context of finances. SOR ¶ 2.a is not established for the same reason that SOR ¶ 1.a is not established. The specific allegation of making a false statement about the amount of money he had when he filed his food stamp application is refuted.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 lists conditions that could raise a security concern and may be disqualifying 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.

Applicant has the following Sudan family connections alleged in the SOR: (1) his son, four brothers, and two sisters are citizens and residents of Sudan; and (2) he provided financial support to his brother, sister, and son who are citizens of Sudan.

Applicant did not have sufficient connections with his sisters residing in Sudan to cause a security concern. In Applicant's April 9, 2017 SCA, Applicant said he communicated with his two sisters quarterly with his most recent communications in December 2014. At his hearing, he said he has not talked to his sisters for about six years. He said he most recently provided financial support to them in 2009. He is not close enough to his sisters in Sudan to cause a security concern. SOR ¶¶ 3.b and 3.e are mitigated.

The mere possession of close family ties with people living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person living in a foreign country, this 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. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of that applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939

at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, “the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.” ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation’s government’s relationship with the United States. These factors are relevant in assessing the likelihood that an applicant’s family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorism causes a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Sudan with the United States and the situations involving terrorists and insurgents in that country place a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member living in or visiting them do not pose a security risk because of the risks due to terrorists in that country. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns about assisting someone living in or visiting Sudan.

The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. July 28, 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant’s immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant’s ties and contacts with immediate family members in a foreign country raise security concerns because those ties and contacts create a potential vulnerability that a foreign power, [criminals, or terrorists] could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant’s immediate family members -- has by virtue of a security clearance. A person may be vulnerable to influence or pressure exerted on, or through, the person’s immediate family members -- regardless of whether the person’s family members are prominent or not.

Guideline B security concerns are not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to

have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Sudan seek or have sought classified or economic information from or through Applicant, his family, or contacts, nevertheless, this future possibility continues to warrant concern. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Sudan has a significant problem with terrorism and crime. Applicant’s family in that country “could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him.” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant’s relationships with people who are living in Sudan or visiting Sudan create a potential conflict of interest because terrorists could place pressure on his family living in that country in an effort to cause Applicant to compromise classified information. Those relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Department Counsel produced substantial evidence of Applicant’s relationships with people living in Sudan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns including:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

As indicated in the disqualifying conditions Foreign Influence section, *supra*, Applicant has several relatives who are citizens and residents of Sudan. In 2017, he had frequent contacts with two brothers and his son. His contacts with them increase the risk that they could be targeted to put pressure on Applicant to provide classified information.

The Appeal Board has concluded that contact every two months or three months constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sept. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent and stating "The frequency with which Applicant speaks to his family members in Iran does not diminish the strength of his family ties."). Frequency of contact is not the sole determinant of foreign interest security concerns. "[I]nfrequency of contact is not necessarily enough to rebut the presumption an applicant has ties of affection for, or obligation to, his or her own immediate family as well as his or her spouse's immediate family." ISCR Case No. 17-01979 at 4 (App. Bd. July 31, 2019).

After he completed his SCA and counterintelligence interview in 2017, Applicant greatly reduced or stopped his communications with his brothers and son. He said he has not provided any financial support to family members, except possibly his son, for more than 10 years, and not to his son for several years. His previous financial support to his brother, and to his son support the concern that he had a relationship with them, and there is insufficient evidence that he no longer cares about them.

Applicant's SOR does not allege that Applicant frequently traveled to Sudan and that he is married to a woman who is a citizen and resident of Sudan. She has never been to the United States. He provided \$15,000 in financial support to his spouse. She lives with his uncle. Applicant said he did not own a car on his food stamp application, which he knew was not true. He did not disclose his part-time employment providing translation and taxi services on his food stamp application. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered, stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation;

(d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR information discussed in this paragraph will not be considered except for the five purposes listed above.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." His relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Sudan. Applicant has lived in the United States since 1999, except when he was serving the United States in Iraq from 2007 to 2010 and in another Middle Eastern country since 2016. In 2004, he became a U.S. citizen. He uses a U.S. passport. He owns a residence in the United States and makes his mortgage payments. He votes in U.S. elections, and he pays U.S. and local taxes. He has about \$80,000 in his U.S. retirement and bank accounts. He has had DOD-related employment since 2016.

Applicant served with U.S. armed forces in Iraq from 2007 to 2010. In 2010 he left employment as a linguist because a rocket hit the building where he lived. It landed next to his room, but due to sandbags it did not explode. He has excellent employment, and he contributes to the success of his employer. He has a substantial U.S. income and investments in the United States. These factors are balanced against his relationships with family in Sudan, and his relatives in Sudan are at risk from criminals, terrorists, and human rights violations of the Sudan government. Since 1993, the U.S. Secretary of State has designated Sudan as a State Sponsor of Terrorism for supporting international terrorist groups. Applicant's access to classified information could add risk to his relatives living in Sudan. Applicant's Sudan citizenship was evidently involuntarily renounced when he became a U.S. citizen. There is no allegation that he would choose to help the Sudan Government against the interests of the United States. The concern here pertains to the risk to his relatives living in Sudan and does not relate to his loyalty or patriotism to the United States.

Applicant has not rebutted the concern arising from his relationships with his son, his two brothers who are all residents of Sudan. While he reduced or ended his communications with his brothers and son, his reduction in communications and contacts with them does not prove he no longer cares about their welfare or has ended his affection for them. His connections to the United States, taken together, are insufficient to overcome the foreign influence security concerns under Guideline B.

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 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.

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 60-year-old U.S. citizen employed as a linguist in the Middle East since 2016, who seeks a security clearance. In 1995, he received a bachelor's degree in business studies in Sudan. He immigrated to the United States in 1999, and he became a U.S. citizen in 2004. He served in Iraq supporting DOD from 2007 to 2010, and he was at risk from death or serious injury while serving there. In 2010, he was almost killed in Iraq when a rocket landed near his residence, but did not explode.

Two Army captains described Applicant as an asset to mission accomplishment who is diligent, positive, innovative, and responsible. His program manager said Applicant is mature, intelligent, and self-motivated. Their statements support approval of his access to classified information. He received a unit coin and certificate of appreciation for his contributions to the success of those units that received his support.

A Guideline B decision concerning Sudan must take into consideration the geopolitical situation and dangers in that country. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion). Sudan is a dangerous place because of violence from terrorists, and the Sudan government does not respect the full spectrum of human rights. Since 1993, the U.S. Secretary of State has designated Sudan as a State Sponsor of Terrorism. Sudan continues to be a very dangerous and unstable country. While Sudan has shown some improvements in the last three years, terrorists continue to threaten the interests of the United States, and those who cooperate and assist the United States.

From 2009 to 2021, Applicant traveled to Sudan six times. Four of his stays were over 30 days. His most recent visit was in 2019, when he married his spouse. He is sufficiently close to two brothers and his son to cause a security concern. These three relatives are citizens and residents of Sudan. None of them are citizens of the United States. Applicant did not meet his burden of showing that these three relatives are unlikely

to come to the attention of those interested in acquiring U.S. classified information. “Application of the guidelines is not a comment on an applicant’s patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member.” ISCR Case No. 17-01979 at 5 (App. Bd. July 31, 2019).

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant refuted the personal conduct and financial considerations allegations; however, he failed to mitigate foreign influence security concerns.

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 E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline B:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant
Subparagraphs 3.c and 3.d:	Against Applicant
Subparagraph 3.e:	For Applicant
Subparagraph 3.f:	Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge