



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



In the matter of:)
)
) ISCR Case No. 12-12172
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

07/31/2013

Decision

DAM, Shari, Administrative Judge:

In 1952 Applicant was born in Eritrea. In 1991 he immigrated to the United States via Saudi Arabia, having lived in Sudan for four years. In 1999 he became a U.S. naturalized citizen. His spouse is a U.S. naturalized citizen, residing here. One of his daughters is a citizen and resident of Sudan. Two sisters and one brother are citizens of Eritrea residing in Sudan. One brother is a citizen and resident of Sudan. His wife owns property in Egypt where they intend to retire. When he completed a security clearance application in June 2012, he failed to disclose his termination from a linguist position with a defense contractor in 2010. He produced insufficient evidence to mitigate foreign influence or personal conduct security concerns. Access to classified information is denied.

Statement of the Case

On June 13, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (hereinafter SF-86). On February 6, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). (Item 3.) The action was taken under Executive Order 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 adjudicative guidelines (AG) effective within the DOD on September 1, 2006. The SOR detailed reasons why DOD adjudicators could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on February 27, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written case on May 22, 2013. A complete copy of the File of Relevant Material (FORM) containing eight Government Items was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on June 18, 2013, and returned it to the Defense Office of Hearings and Appeals (DOHA). He timely submitted an exhibit that I marked as Applicant Exhibit (AE) A, and admitted into the record without objection from Department Counsel. DOHA assigned the case to me on July 15, 2013.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning Sudan and Egypt. (FORM.) Counsel provided supporting documents to show detail and context for those facts relating to Sudan. (FORM, Section IV; Exhibits I through XII.) She also provided supporting documents to show detail and context for those facts relating to Egypt. (FORM, Section V; Exhibits I through VIII.) Applicant did not object to these documents and Department Counsel's request was granted.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See 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 in 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).

Findings of Fact

Applicant admitted the underlying facts alleged in Paragraph 1 of the SOR relating to foreign influence. He denied those allegations in Paragraph 2 of the SOR relating to personal conduct. His admissions, including those made in his response to DOD Interrogatories, during a June 13, 2012 Interview, and in a Counterintelligence-

Focused Security Screening Questionnaire, are incorporated in the following findings of fact. (Items 3, 6, 7, 8.)

Applicant was born in Eritrea in 1952. In 1972 he went to Ethiopia to attend a university for two years. In 1974 he fled to Sudan after communists overthrew the Ethiopian government. He remained there as a refugee. In 1977 he left Sudan and traveled to Saudi Arabia, where he obtained employment. In September 1991 he arrived in the United States on a six-month tourist visa. He reunited with his wife and children, who had arrived in the United States in 1986 on tourist visas and stayed with his brother-in-law. In January 1992 he changed his immigration status to political asylum. In January 1993 he received a U.S. Permanent Resident Card. In April 1999 he became a naturalized U.S. citizen. (Item 7.)

From December 1999 to December 2005, Applicant worked as a facility manager for an oil company. Subsequently, he worked as a car salesman, parking lot attendant, manager of a company, and security guard. He was unemployed for three months in 2006. Between May 2008 and December 2010, he worked as a linguist for a defense contractor, providing support to U.S. troops in the Middle East. (Item 7.)

Applicant subsequently was unemployed until April 2011, and then began working as a security guard for the private company where he previously worked. In May 2012 he began a position as a linguist for another company and deployed to an African country. (Item 7.) He is currently residing at home, pending the resolution of his security clearance application.

Applicant's wife was born in Eritrea in 1956. They married in 1979 while living in Sudan. She immigrated to the United States in 1986. She is a naturalized U.S. citizen, residing with Applicant. She works as a teacher. In 2004 she purchased an apartment in Egypt as their retirement home. They paid the property off in 2008. No one lives in the apartment now. It is worth \$30,000 to \$40,000. (Item 7.) He owns his current home in the United States and has an estimated net worth of \$126,000. (Item 6.)

Applicant and his wife have five children, three sons and two daughters. One daughter was born in Eritrea and resides in Sudan. He has not had contact with her for many years. (AE A.) His other daughter was born in Saudi Arabia and is a naturalized U.S. citizen, residing here. Two sons were born in Saudi Arabia and are naturalized U.S. citizens, residing here. Another son was born in the United States. (Item 8.)

Applicant's parents were born in Eritrea. They were citizens and residents of Eritrea. They are deceased. (Item 7.) He has four brothers, one sister, and one stepsister, all of whom were born and raised in Eritrea. Three brothers are deceased. Another brother is a citizen and resident of Sudan. Applicant calls him once a year. Applicant's sisters are citizens and residents of Eritrea. He speaks to one sister once or twice a month. He speaks to his stepsister once every two or three years. (Items 5, 6, 8; AE A.)

Applicant had a friend, who was a citizen and resident of Sudan. He had spoken to her about once a month up to January 2012. He has had no further contact with her. (Item 8; AE A.) He has another friend, who is a citizen of Sudan and resident of Egypt. He had spoken to her twice a month up to July 2012. He has had no further contact with her. (Item 8; AE A.)

There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. However, there is adverse information relating to Applicant's termination from his position as a linguist in December 2010.

On June 13, 2012, Applicant submitted his SF 86. In response to two questions in *Section 13.A Employment Activities* (regarding employment as a linguist from May 2008 to December 2010), Applicant indicated that the reason he left that employment was because he had completed his contract. He did not disclose that he had been terminated from his position. In his Answer to the allegation regarding his failure to disclose said information, he denied that he intentionally failed to disclose it, but stated that "it was a wrongful termination." (Item 3.) He said that he obtained unemployment compensation as a result of the company's actions. (Item 3.) He stated that "my termination was unfair, unethical from (the company's) side." (AE A.) "The reason that the (company) has lost the case with unemployment office and I collected my unemployment benefits was a clear manifestation of my termination invalidity." (AE A.) He asserted that the company told him that it did not have a good reason to terminate him and indicated that the mission was coming to an end and the company was reducing manpower. (AE A.) But, he also stated that the company alleged that while he was deployed he made derogatory statements about the national government and coalition forces. (AE A.)

Applicant submitted letters of recommendation from supervisors with whom he worked while deployed to the Middle East. A commander with an Army unit with which Applicant worked during his deployment between 2008 and 2010 wrote, "It is with my strongest urging and recommendation that [Applicant] be considered for continued translator duties." (Item 4.) The operating partner for the private company where Applicant worked as a security officer provided a letter of recommendation. The partner, a former U.S. Army Captain, wrote that Applicant is a person of "character, integrity, strong work ethic and sense of duty and responsibility." (Item 4.) Applicant submitted his 2012 Annual Assessment as a linguist from his current employer. His supervisor rated him "Outstanding" in eight of the categories, "Exceed" in one category, and "Meets" in one category. The Brigade Engineer for the unit in which Applicant worked considered him a "vital member" of their unit. (Item 4.) A U.S. Army major, who worked with Applicant in January 2013, stated that Applicant has done an "exceptional job coordinating with our [Middle Eastern] guards." (Item 4.)

I take administrative notice of the facts set forth in the Administrative Notice documents (FORM) concerning Sudan and Egypt, which are incorporated herein by reference. Of particular significance are Sudan's history of state sponsored terrorism, and the United States' trade embargo on Sudan. Both countries have dismal records of

human rights violations, are experiencing significant political unrest, and expressing anti-U.S. sentiments. The U.S. State Department has issued travel warnings to the countries because of ongoing threats to U.S. citizens and its interests. Both countries engage in illegally collecting U.S. technologies and proprietary materials.

Policies

Eligibility for a security clearance is predicated upon 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 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information

Analysis

Foreign Influence

AG ¶ 6 explains the security concern pertaining to foreign influence as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 sets out two conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact 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
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

The mere possession of close family ties with a family member living in Sudan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative 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 Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).)

Sudan has significant internal anti-Western terrorism threats that operate openly contrary to U.S. interests. It is known to target U.S. citizens to obtain protected information, and has a significant interest in acquiring defense-related proprietary information. Accordingly, Applicant's family connections there have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

In 2004 Applicant's wife purchased an apartment worth \$30,000 to \$40,000 in Egypt where they intend to retire. In 2008 they paid off the property. Given Egypt's

current political situation and anti-Western climate, their financial asset in Egypt raises a security concern under AG ¶ 7(e).

The Government produced sufficient evidence to raise the above disqualifying conditions. Applicant's regular and close contacts, relationships, and connections with Sudan shift the burden to him to prove mitigation.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the above security concerns are:

(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 U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., 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; and

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

Considered in light of the substantial anti-Western terrorism threat and state sponsored terrorist activities in Sudan, and the recent hostilities expressed by Egypt toward the United States, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual and those of the United States due to family ties in Sudan. He has ongoing relationships with family members living in Sudan and an interest in protecting three siblings and possibly his daughter. He should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist family members, who might be coerced by terrorists or other governmental entities in Sudan. In addition, his communications with his Sudanese family members, other than his daughter, since coming to the United States are sufficiently frequent not to be construed as casual or infrequent. Accordingly, he failed to establish mitigating conditions set forth in AG ¶¶ 8(a) or (c) as to his siblings. However, he did establish mitigation in regard to his relationships with his daughter in Sudan, and two friends, one in Sudan and one in Egypt, as he no longer has contact with these people or his daughter.

The evidence establishes some mitigation under AG ¶ 8(b). Applicant provided some evidence of longstanding relationships or deep ties to the United States since arriving here in September 1991 and becoming a U.S. citizen in 1999. He attended college here for a period of time and was employed by various American companies. He has U.S. assets totaling approximately \$126,000. His spouse and four children are U.S. citizens and residents. His mother-in-law is a naturalized U.S. citizen. His spouse works as a teacher. He has successfully served as a linguist, supporting U.S. troops in the Middle East.

Personal Conduct

The security concerns pertaining to the personal conduct guideline are set out in AG ¶ 15:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying under the facts 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 conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The Government alleged in SOR ¶¶ 2.a and 2.b that Applicant withheld from his SF 86 information about his termination from his position as a linguist from May 2008 and December 2010. Applicant denied that he intentionally falsified or failed to disclose the requested information when he completed his security clearance application.

When a falsification allegation is controverted or denied, as in this case, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant did not disclose the termination because he determined that it was a wrongful termination, and he received unemployment compensation as proof of its wrongful nature. While that information maybe a legal defense to the termination, it is

not a valid or candid reason for failing to disclose the requested information. Clearly, he understood the questions as noted by his subsequent explanations. Hence, the evidence establishes the application of AG ¶ 16(a).

AG ¶ 17 includes one condition that could mitigate the two security concerns arising under this guideline:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant failed to disclose the requested information in June 2012, about one year ago. In his Answer and Response to the FORM, he continues to dismiss his duty to report the termination because he strongly asserted that it was not a valid action by his employer, and thus not required to be disclosed. His persistent defense and assertions raise questions about his judgment. AG ¶ 17(c) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines B and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are facts supporting mitigation of the raised security concerns. Applicant immigrated to the United States in 1991 and became a citizen eight years later. His wife, four children, and mother-in-law are citizens and residents of the United States. He has a history of working for U.S. companies. He owns a home in the United States. He received strong support for his previous work as a linguist in the Middle East.

The circumstances tending to support denial of Applicant's clearance are more significant than the facts weighing toward approval of his security clearance. Applicant's daughter, two sisters, and one brother are citizens of Eritrea and residents of Sudan. Another brother is a citizen and resident of Sudan. Applicant has sufficiently frequent contact with those family members, indicating a commitment to them and their welfare. Applicant's family in the Sudan creates a heightened risk to exploitation, manipulation, pressure or coercion. In 2008 he and his wife paid off the purchase of an apartment in Egypt where they intend to retire in the future, which demonstrates their connections to that country. In addition to these ties to Sudan and Egypt, Applicant intentionally failed to disclose a termination from a linguist position because he considered it wrongful. While his position regarding the situation may have some legal authority in regard to challenging that termination, his decision to withhold information about it was voluntary and misguided. He had a duty to disclose it and his rationalization for not disclosing the information raises questions about his willingness to follow rules with which he disagrees.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign influence or personal conduct considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

Conclusion

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

SHARI DAM
Administrative Judge