

DATE: April 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-02838

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Philip D.Cave, Esq.

SYNOPSIS

All members of Applicant's immediate family are citizens of Sudan or Morocco. Applicant sufficiently mitigated the foreign influence security concerns. Clearance is granted.

STATEMENT OF THE CASE

Applicant, an employee of a defense contractor, applied for a security clearance. The Defense Office of Hearings and Appeals (DOHA), the federal agency tasked with determining an applicant's eligibility for access to classified information, declined to grant Applicant a clearance. In accordance with the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) on 5 November 2002 detailing why a clearance was not granted and recommending Applicant's case be referred to an administrative judge to determine whether the clearance should be denied/revoked. In the SOR, DOHA alleged Applicant failed to meet the foreign influence (Guideline B) personnel security guideline. Directive ¶ E2.A2.1.

Applicant answered the SOR in writing on 8 December 2002. The case was assigned to Administrative Judge Roger Willmeth on 5 February 2003 and transferred to me on 12 February 2003 because of Judge Willmeth's caseload. On 24 March 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of six exhibits. Applicant testified on his own behalf and submitted 15 exhibits. A transcript (Tr.) of the proceeding was received on 1 April 2003.

FINDINGS OF FACT

Applicant is 45-year-old naturalized U.S. citizen who works for military law enforcement agencies in the Middle East as a linguist. Ex. 1 at 1; Tr. 15-16. He was born and raised in a small farming community in the Sudan. Tr. 30. Applicant is a member of a rather large family. He is the youngest of seven brothers and seven sisters, most of whom were born to a different mother. His step-siblings are considerably older than he is. Most of them reside in Sudan. Ex. 1 at 5; Tr. 24-25.

One of his older step-brothers is a retired government agricultural officer who worked as a farm supervisor. Ex. 2; Tr. 35. Another brother works in Saudi Arabia as a truck driver. Ex. 2. One brother is a certified public accountant living in the U.S., but is still a citizen of Sudan. Ex. 1 at 5; Tr. 32. Although he stays in touch with this brother, they are not close. *Id.* He does not have contact with his other brothers and sisters. Tr. 31.

Applicant has no debts . Tr. 24. He does not make financial contributions to any of his family living abroad. Tr. 31.

Applicant came to the U.S. in 1981 when he was 23 years old. In 1985, he traveled back to Sudan on his Sudanese passport to visit his dying father. Tr. 18, 39. His only other trip to Sudan occurred in 1992 when he went home to visit his dying mother. Tr. 19. As he had become a U.S. citizen in 1991, he used his U.S. passport on that trip. Ex. 1 at 1; Tr. 19. Applicant has never claimed dual citizenship and destroyed his Sudanese passport when he acquired a U.S. passport. Tr. 19, 20.

Applicant is married to a Moroccan citizen he met in the U.S. She has a green card and is seeking U.S. citizenship. They travel to Morocco once a year to visit his wife's parents who are elderly. Tr. 34.

From 1984 until 1992, Applicant worked at the Embassy of the Kingdom of Saudi Arabia as a general services translator-he translated hospital bills and school transcripts. Ex. 1 at 4, 6; Tr. 42. As a contract employee, Applicant has worked with U.S. military forces in Kuwait and Saudi Arabia since 1999.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth the personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the factors listed in ¶ 6.3 of the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

In the SOR, DOHA alleged under Guideline B that Applicant's wife is a Moroccan citizen; that his oldest brother is a citizen and resident of Sudan and a retired Sudanese government employee; and that his brothers and sisters are Sudanese citizens.

Under Guideline B, a security risk may exist when members of an applicant's immediate family are not citizens of the United States. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government established that Applicant has immediate family members who are not citizens of the U.S. (DC 1) and that Applicant's brother was connected with the foreign government of Sudan (DC 3). In fact, none of his family members are U.S. citizens. But, they are not foreign agents or in a position to be exploited such that Applicant would be forced to choose between his loyalty to his family and the U.S. DC 1. Applicant's contact with his family members is very infrequent (*cf.* MC 3) and, apparently, limited to the brother living in the U.S. Applicant has reported his foreign contacts (*cf.* MC 4) and does not appear to have any foreign financial interests (*cf.* MC 5).

Applicant believes he owes everything to the U.S. and all his feelings are for the U.S. Tr. 28. He understands the importance of protecting classified information and knows what to do if he is approached by persons not authorized access. Tr. 22-23. Applicant has sufficiently mitigated the security concerns raised by the foreign citizenship of members of his immediate family. Although Sudan has been designated a state sponsor of terrorism, and most of Applicant's immediate family lives there, Applicant does not represent a security risk to the U.S. It is in the national interest to grant him a clearance. Finding is for Applicant.

FORMAL FINDINGS

Conclusions as to each of the allegations in the SOR as required by Executive Order No. 10865 § 3, ¶ 7 and the Directive ¶ E3.1.25, are as follows:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.