

KEYWORD: Foreign Influence

DIGEST: Applicant has six siblings who are citizens and residents of the Republic of Sudan. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from foreign influence. Clearance is denied.

CASENO: 02-26209.h1

DATE: 05/03/2005

DATE: May 3, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26209

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has six siblings who are citizens and residents of the Republic of Sudan. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On April 26, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 6, 2004, Applicant answered the SOR and requested a hearing. On January 1, 2005, I was assigned the case. On February 22, 2005, I convened a hearing in this matter. On March 3, 2005, the transcript (Tr.) of the hearing was received.

FINDINGS OF FACT

The SOR alleges Foreign Influence. The Applicant admits to the following: all six of his siblings reside in the Sudan. He does not maintain regular contact with them. He last visited the Sudan in December 2000. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 50 years old. He began working as a linguist for a defense contractor in July 2001. He served 12 months as a translator for a U.S. military service in Kuwait and Saudi Arabia. When his interim clearance was terminated, Applicant obtained a job as a computer lab manager at a liberal arts college in the U.S. The Applicant is regarded by those who know him as honest, talented, a team player, an invaluable asset, an ideal employee, with high moral values, excellent integrity, and a hard worker. (App Ex B) He has received numerous awards for outstanding

performance and dedication.

In October 1991, Applicant left Sudan to escape oppression and in fear of being subject to prosecution. (Tr. 26). The country is governed by an oppressive regime, which Applicant is politically opposes to. Following the coup d'etat in 1989, Applicant became involved with the Republican Brotherhood (RB). The RB is banned, its leader executed, and one cannot even speak of the RB in social settings in Sudan. (Tr. 36) In 1985, Applicant was detained for distributing pamphlets against the government's understanding of Islam. (Tr. 31) He believes he has been blacklisted by the Sudanese government. (Tr. 36)

Applicant's has six siblings living in the same village in Sudan. When the SOR was issued one brother lived in Saudi Arabia. That brother now lives in Sudan. Two brothers are farmers and one is a retired factory worker. All three of his sisters are housewives. Two of his sisters' husbands are farmers and one is a taxi driver. Only one brother has a telephone, which Applicant calls monthly. (Tr. 32) He would like to visit his siblings and have his children also visit them, but he does not have the means to do so. (Tr. 35) On occasion, he may send his siblings medicine or clothing.

In November 2000, Applicant became a naturalized U.S. citizen. In December 2000, Applicant traveled to Sudan to see his mother who was very sick. He had to wait 10 years to make the trip because he could not make it before he became a U.S. citizen for fear he would be subject to interrogation, detention and maybe jail if he did not have U.S. citizenship status. (Tr. 20) He traveled on his U.S. passport and spent three weeks in Sudan. His mother died the day he arrived back in the U.S. from the trip.

Applicant is married, his wife was taking undergraduate classes, but due to a move, now works as a team leader for a department store. He has two children in high school. His wife and children were born in the Sudan, but are now American citizens living in the U.S. He owns a house in the U.S. Applicant asserts he came here as a victim and has done nothing wrong.

The Republic of Sudan has struggled with many governmental changes, civil war, and factionalism since its independence in 1956. In 1989, the National Islamic Front executed a coup d'etat and overthrew the democratic government. (Gov Ex 2, at p.5) The new government is a military dictatorship imposing Islamic law. The coup re-ignited the civil war that had continued for decades in Sudan. After the coup, the U.S. suspended development assistance to Sudan. (Gov Ex 2 at p. 10.) In 1993, the U.S. listed Sudan as a state sponsoring terrorism. *Id.* In 1997, the U.S. imposed economic, trade, and financial sanctions against Sudan, and in 1998 the U.S. launched retaliatory cruise missile strikes against the capital, Khartoum. *Id.* at 11. Relations between Sudan and the U.S. have improved only slightly within recent years. *Id.* The U.S. State Department reports Sudan has an extremely poor record on human rights practices. (Gov. Ex five at p.3)

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Foreign Influence. Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's three brothers and three sisters are citizens and residents of Sudan. Thus, this potentially disqualifying condition applies.

Under the Directive, these potentially disqualifying conditions can be mitigated under certain conditions. It is potentially mitigating where the "associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person involved and the United States." Directive, ¶ E2.A2.1.3.1. None of Applicant's relatives are members of the military forces or the government of Sudan. Two of his brother are farmers and one is a retired factory worker. His three sisters are housewives, two of which are married to farmers and one is married to a taxi driver. The evidence indicates none of them is an "agent of a foreign power" as defined by 50 U.S.C.A. § 1801(b).

In assessing whether an applicant is vulnerable to exploitation through relatives or associates in a foreign country, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Sudan as ruled by an authoritarian government committed to establishing an Islamic state. The country has been embroiled in civil war for most of the time since 1956. The coup d'etat in 1989 and the government's support of terrorists have severely strained the relationship between the United States and Sudan resulting in U.S. sanctions against that country. Sudan has a dismal record of protecting human rights. Under the circumstances, it is possible that a "foreign power" in Sudan would attempt to exploit or pressure Applicant's relatives to force Applicant to act adversely to the interests of the United States.

It is important to consider the vulnerability to duress of Applicant's relatives and associates in Sudan. Applicant's brothers and sisters live and work in Sudan, along with their families. It does not appear Applicant's relatives in Sudan have the economic means to leave the country at will. As noted above, the government engages in human rights violations, including arbitrary and unlawful abductions, torture, disappearance, or forced dislocation of residents. Under these circumstances, Applicant's relatives in Sudan are potentially vulnerable to duress or adverse influence.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through his ties with relatives and associates. On one hand, Applicant is a U.S. citizen by choice, and has lived in this country for the past 13 years. He has had limited contact with his relatives in Sudan, having visited only once since he left in 1991. I do not find the fact Applicant visited Sudan in December 2000 to be disqualifying. I find for him as to SOR paragraph 1.c.

Applicant calls his brother monthly. All Applicant's assets are in this country. He successfully held an interim clearance for about one year. He is an ardent supporter of democracy and dislikes the current government of Sudan. On the other hand, all of Applicant's siblings and their families live in Sudan. Although the fact that he worked for the U.S. government may not be widely known, he believes he is on the Sudanese government's blacklist. Considering Applicant's numerous relatives in Sudan, the strained relations between Sudan and the U.S., Sudan's record of human rights abuses, and Applicant's public involvement with organizations opposing the government of Sudan, I find Applicant's family members are in a position to be exploited by a foreign power that could force Applicant to choose between his relatives and loyalty to the U.S. I conclude the mitigating condition set out in E2.A2.1.3.1 of the Directive does not apply.

Under E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant's monthly calls to his brother is regular contact that raises a presumption that his relationship is not casual. See ISCR Case no. 00-0484 at p.5 (Appeal Board, February 1, 2002) This potentially mitigating condition does not apply to his calls to his brother.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Although I agree with Applicant's assertion he came to the U.S. as a victim and has done nothing wrong. I conclude Applicant has not mitigated the potential security concerns arising from Applicant's personal ties to relatives in Sudan.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Foreign Influence: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.