

KEYWORD: Foreign Influence

DIGEST: Applicant has close and ongoing ties to immediate family members in Sudan, a country with an authoritarian government that the U.S. Government has designated as a state sponsor of terrorism. Clearance is denied.

CASE NO: 03-23633.h1

DATE: 04/25/2006

DATE: April 25, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23633

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

**FOR APPLICANT**

Philip D. Cave, Esq.

## **SYNOPSIS**

Applicant has close and ongoing ties to immediate family members in Sudan, a country with an authoritarian government that the U.S. Government has designated as a state sponsor of terrorism. Clearance is denied.

## **STATEMENT OF THE CASE**

This case arose when the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 3, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged a security concern under Guideline B for foreign influence. Applicant replied to the SOR on January 6, 2005, and he requested a hearing. The case was assigned to me on July 7, 2005. With the agreement of counsel, a notice of hearing was issued scheduling the hearing for September 20, 2005. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the transcript October 5, 2005.

## **RULINGS ON PROCEDURE**

As requested by Department Counsel, I took administrative or official notice of certain matters about Sudan and the UAE (Exhibits 4 - 11). As requested by Applicant, I admitted two documents (Exhibits A8 and A9) for the limited purpose rebutting or contradicting some of the information contained in the government's administrative notice exhibits.

The index to the transcript and page 97 erroneously indicate that Exhibit 13 was admitted into the record evidence. The document was marked as Exhibit 13 when it was used to attempt to refresh a witness's recollection. Exhibit 13 was not offered nor admitted, and I have not considered it in reaching my decision (Transcript at 98, 128).

## **FINDINGS OF FACT**

In his Answer to the SOR, Applicant admitted the allegations in subparagraphs 1.a - 1.i. In addition, he provided a brief explanation to each allegation. Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following findings of fact.

Applicant is a 44-year-old married man who was born in Sudan. He obtained U.S. citizenship in 2000, and as a result he is no longer a citizen of Sudan. He is an employee of a contractor of the Defense Department, and he is seeking a security clearance for his job as a linguist translating Arabic into English and vice-versa. He has been working as a linguist since about December 2002. His work as a linguist includes working for the U.S. Air Force Office of Special Investigations (OSI) in both Kuwait and Saudi Arabia. He then held an interim security clearance, and he performed his duties without incident.

Applicant was raised in Central Sudan. While attending high school, he joined a student group or coalition that advocated for democracy in Sudan. After completing high school, Applicant took a job as a clerk for a private company. In about 1985, he decided to go to Saudi Arabia to pursue employment opportunities there. He found a job working in a Royal Hospital in Riyadh. In about 1989, while Applicant was working in Saudi Arabia, the National Islamic Front police came to Applicant's family home to arrest him due to his previous membership in the pro-democracy group. Applicant's brother, who was a member of the same group, was arrested and then held in custody for about two months. While in custody, Applicant's brother was probably tortured and abused. Applicant returned to Sudan in 1989, in part, because he was worried about his family. He stayed in Sudan until about 1990 when he returned to his job in Saudi Arabia.

Applicant came to the U.S. sometime in 1990 for his employment as a translator for a Saudi citizen. About the same time, the Persian Gulf War was unfolding, a war that Sudan, as well as a few other Arab countries, opposed. As a result, Saudi Arabia was deporting Sudanese citizens back to Sudan. Not wanting to return to Saudi Arabia and be subject to deportation, Applicant elected to stay in the U.S. He did so by applying for and being granted asylum by U.S. immigration officials. His request for asylum was based on his fear of persecution by the National Islamic Front in Sudan (Transcript at 104 -105). Applicant was naturalized as a U.S. citizen in 2000, and he obtained a U.S. passport in 2001.

Since arriving in the U.S., Applicant has worked in various jobs and furthered his education. His employment history includes working as a cashier, gas station attendant, phlebotomist, and physical therapist assistant. From September 1993 to May 1997, he attended a community college and was awarded an Associate in Applied Science degree as a physical therapist assistant. He has worked as a licensed physical therapist assistant since November 1997. His work record as a physical therapist assistant appears to be very good (Exhibits A2, A3, and A6).

Applicant is married to a woman who is a native of Sudan. She is currently a citizen of Sudan and a permanent resident

alien of the U.S. She arrived in the U.S. with her parents in 1989 when she was 15 or 16 years old, and she has resided here continuously. Her parents and four siblings are all living in the U.S. and are U.S. citizens or in the process of becoming U.S. citizens. She was allowed to stay in the U.S. after being granted asylum, and she plans on obtaining U.S. citizenship when she is able to apply. Applicant and his wife have a four-year-old son who is a native-born U.S. citizen.

Applicant has a small piece of land in Sudan, although it appears the property is titled in his mother's name. The property is valued at less than \$2,000, and Applicant plans to sell it when the market improves. Otherwise, neither Applicant nor his wife has any business or financial interests in Sudan. They own a home in the U.S. with a market value of about \$350,000.

Applicant's mother and father are citizens of and residents in Sudan. They still reside in a small town in Central Sudan. Applicant's father is now retired, but he previously owned a small repair shop. His mother has always been a housewife. Applicant has regular contact with his parents by telephone about once per month. Applicant provides financial assistance to his parents by sending them money via a money transfer agency (Exhibit A1). The amount varies, but it is approximately \$200 per month.

Applicant has several siblings. One brother and four sisters are citizens of and residents in Sudan. The brother (the same one who was held in custody) recently finished college and is seeking employment. He currently lives with his parents. Three of the sisters also live with the parents. The fourth sister is married. Applicant has less contact with his siblings than his parents, but sometimes speaks with one or more when he telephones his parents. Applicant attempted to help his brother in Sudan to immigrate to the U.S. Ultimately, his efforts were unsuccessful as his brother was unable to obtain a visa.

Applicant has two other brothers who are also citizens of Sudan, but they currently live and work in the United Arab Emirates (UAE). One brother is employed as a driver for a local municipality. This brother is married to a Sudanese woman, and he has lived in the UAE for about 20 years. The other brother is employed as a machinist for a private company. He is married to a Sudanese woman, and he has lived in the UAE for about seven years. From time to time, both brothers travel to Sudan for family visits. Applicant speaks to his brothers by telephone about once every two to three months. He visited them in August 2002 in conjunction with a trip to visit his family in Sudan.

Applicant has made trips to visit his family in Sudan in 1997 and 2002. He anticipates traveling to the Sudan in the future for the same purpose.

None of Applicant's family members in Sudan are aligned with the Southern Rebel Army or the SPLA. Likewise, none are aligned with Sudan's President, who is a military dictator. And none of his family members have been displaced by the civil war in Sudan.

Two character witnesses testified for Applicant. One witness is a person who hired Applicant as a licensed physical therapist assistant. She has known Applicant for four years and describes him as a person of integrity. The second witness, a retired Army master sergeant, is now working as a program manager for a defense contractor. He describes Applicant as one of his best employees, a very reliable and trustworthy person.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

## **BURDEN OF PROOF**

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>(3)</sup> The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.<sup>(4)</sup> An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>(5)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(6)</sup>

As noted by the Supreme Court in *Department of Navy v. Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(7)</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

## CONCLUSIONS

Under Guideline B for foreign influence,<sup>(8)</sup> a security concern may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline B.<sup>(9)</sup> Applicant's parents and four siblings are citizens and residents of Sudan, and two brothers, who are also Sudanese citizens, reside in the UAE. It appears Applicant has close ties of affection or obligation to his immediate family members as evidenced by: 1) the financial support he provides his parents; 2) the trips he makes to visit his family; and 3) his efforts to help his brother immigrate to the U.S. Although this is all perfectly normal and appropriate, it places Applicant in the position that could create the potential for foreign influence that could result in the compromise of classified information. These circumstances raise a security concern under DC 1<sup>(10)</sup> of the guideline.

I reviewed the mitigating conditions under Guideline B and conclude that only MC 5<sup>(11)</sup> applies. Applicant receives some credit under MC 5 because neither he nor his wife has substantial business or financial interests in Sudan. The nominal value of the land in Sudan would not affect Applicant's security responsibilities. The remaining MC do not apply. I gave consideration to MC 1,<sup>(12)</sup> but it does not apply. It appears that his family members are not agents of the Sudanese government or any other foreign power.<sup>(13)</sup> But that does not end the analysis, as Applicant must show the family members are not in position to be exploited.

In deciding if an applicant has met the second prong of MC 1, it is proper to consider how the foreign country at issue is governed. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes it is nonsensical to treat North Korea as if it were Norway. Here, we know the following about Sudan: 1) Sudan has an authoritarian government, a military dictatorship with a pro-government parliament, in which all effective political power is in the hands of the President (Exhibit 6);<sup>(14)</sup> 2) all political parties were banned following the June 1989 military coup led by the current President (Exhibit 6); and 3) Sudan's Islamist links with international terrorist organizations is a matter of concern for the U.S. Government, leading to Sudan's 1993 designation as a state sponsor of terrorism (Exhibit 6). Given these circumstances, which are beyond Applicant's control, the family members in Sudan, and the two brothers in the UAE but who travel to Sudan, are in a position where there is a potential for them to be exploited in a way that could force Applicant to choose between loyalty to his family and the interests of the U.S. This is not a mere hypothetical situation, as Applicant's brother has previously been held in custody due to his political beliefs, and Applicant obtained asylum in the U.S. based on his fear of persecution if he returned to Sudan. Viewing the record evidence as a whole, the potential for foreign influence in this case cannot be squared or reconciled with the clearly-consistent standard. Accordingly, Applicant is unable to successfully explain, extenuate, or mitigate the security concern.

Although I decided Guideline B against Applicant, this decision should not be construed as an indictment of his loyalty and patriotism to the U.S., as those matters are not at issue. Instead, the clearly-consistent standard requires I resolve any doubt against Applicant, and this is a demanding standard. And his close and ongoing family ties to Sudan, a country with an authoritarian government that has been designated as a state sponsor of terrorism, creates doubt. To conclude, Applicant failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline B: Against Applicant

Subparagraph a: For Applicant

Subparagraphs b - i: Against 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 Applicant. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
4. Directive, Enclosure 3, Item E3.1.14.
5. Directive, Enclosure 3, Item E3.1.15.
6. Directive, Enclosure 3, Item E3.1.15.
7. 484 U.S. at 528, 531 (1988).
8. Directive, Enclosure 2, Attachment 2.
9. Given that Applicant's wife has lived in the U.S. for many years, is a legal resident of the U.S., and intends to obtain U.S. citizenship as soon as she can, I conclude Applicant's relationship with her is of little, if any, security significance. Accordingly, subparagraph 1.a is decided for Applicant.
10. E2.A2.1.2.1. 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.
11. E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.
12. E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or 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(s) involved and the United States.
13. 50 U.S.C. § 438 provides that the definition of "agent of a foreign power" contained in 50 U.S.C. § 1801(b) is to be used for matters involving access to classified information.
14. Exhibit 6 is a report from the State Department's Bureau of African Affairs entitled *Background Note: Sudan*, which was prepared in May 2005.