

DATE: December 17, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00543

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was politically active when he was a student in Sudan, where much of his family still resides. The military junta that overthrew the government of Sudan specifically targeted Applicant and his sister because of their political activities. Other members of Applicant's family have been denied exit visas to leave the country. Applicant is in a position of vulnerability because of his family members in Sudan. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 11 September 2003, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 30 September 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 October 2003. On 2 December 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 8 December 2003.

FINDINGS OF FACT

Applicant is a 49-year-old native of Khartoum, Sudan. He is married to a native of Sudan. Applicant and his wife became naturalized U.S. citizens on 18 January 2002. Applicant's two children, who were minors, became U.S. citizens as a result of their parent's naturalization.

Applicant and his sister attended university in Khartoum, where they were both politically active. As a dental student, Applicant traveled to the U.S. as his school's representative to the General Assembly of the International Dental Students Association. He returned to Sudan and, after graduating from dental school, went to work for the Ministry of Health. He moved to Saudi Arabia in 1982, where from 1983 until 1989 he worked for the Saudi Ministry of Health as a

dentist in a remote area of the country . He came to the U.S. in 1989 on a visitor visa with the intention of taking the U.S. dental exams and, if he passed, staying in the U.S. If he failed the exams, he intended to purchase dental equipment and return to Sudan to establish a dental clinic there. Tr. 23. While Applicant was in the U.S., the Government of the Sudan was overthrown by a military junta. Applicant's father suggested it would be better for him to stay in the U.S. if he could. Applicant passed the first part of the dental exams, but was unable to pass the second part.

In 1990, Applicant went to work for the Saudi Arabian Embassy in Washington, DC, as an interpreter and facilitator for Saudi nationals traveling to the U.S. for medical treatment. His Sudanese passport expired and he acquired a Saudi diplomatic passport and an A2 (diplomatic) U.S. visa. Applicant left his employment with the Saudi Embassy in 1997. Shortly thereafter, Applicant began working for a state university hospital as a laboratory technician. In 2002, shortly after he became a naturalized U.S. citizen, he received his U.S. passport. From December 2002 - September 2003, Applicant worked for a defense contractor and was deployed to Saudi Arabia as a translator for the U.S. Air Force. When the contract was terminated because of the base closure, he was awarded a certificate of appreciation for his outstanding support of the military mission and his selfless devotion to duty. Ex. A.

Two of Applicant's brothers, four sisters, and his mother are all citizens and residents of Sudan. Applicant and his family actively opposed the coup that took control of Sudan in 1989. Tr. 29. Although several members of Applicant's family wish to come to the U.S., the Government has refused to issue them exit visas. Tr. 49. The sister who was politically active at university was a human rights attorney in Sudan. After the Government of Sudan was overthrown in 1989, she was interrogated about her activities by government authorities for at least two days. Tr. 25. She is now a U.S. citizen residing in the U.S.

Applicant's father, who is deceased, was a school teacher. Applicant's mother receives a pension from the government because of her husband's work as a school teacher. As the pension is low, Applicant supports his mother in the amount of \$100 to \$150 per month. Tr. 33. Applicant talks to his mother by phone every month or so. Applicant was unable to return home until an amnesty was announced in 1999. He returned home to visit his mother in 2000 and 2002.

Applicant's parents-in-law are citizens and residents of Sudan. Tr. 44. Applicant has various other relatives in Sudan he contacts on an occasional basis.

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 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 adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense 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 disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines 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. 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant has the following contacts who are citizens and residents of Sudan: his mother (¶1.a.); his two brothers (¶ 1.b.); his four sisters (¶ 1.c.); his parents-in-law (¶ 1.d.); members of his extended family (¶ 1.e.); and friends and associates (¶ 1.f.). A security risk may exist when an applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S. or may be subject to duress. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence and Applicant's admissions that he has immediate family members, and others to whom Applicant is bound by affection, who are citizens and residents of a foreign country. DC E2.A2.1.2.1. A determination that an applicant's foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the family member or associate and loyalty to the U.S. is a mitigating condition under Guideline B. MC 1. Applicant presented evidence that his foreign associates are not agents of a foreign power. However, the inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. Rather, the foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a *position of vulnerability* to be influenced by coercive or noncoercive means, even if there is no evidence that a foreign country has sought to exploit that vulnerability. ISCR Case No. 00-0628 at 5 (App. Bd. Feb. 24, 2003)

The Government of Sudan is an authoritarian regime run by an alliance of the military, that seized power in 1989, and a political party that espouses an Islamist platform. Central Intelligence Agency, *The World Factbook*, <http://www.cia.gov/cia/publications/factbook/geos/su.html>. The leaders of the 1989 coup knew Applicant and his sister because they were at the university at the same time. The Government of Sudan specifically targeted Applicant and his sister for interrogation and intimidation because of their political beliefs. Tr. 26. The Government of Sudan also denied members of Applicant's family exit visas to leave the country. Although the evidence clearly supports Applicant's contention that he is a loyal U.S. citizen, his family members and foreign associates in Sudan clearly put him in a position of vulnerability. Under all the circumstances of this case, I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

DECISION

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 or continue a security clearance for Applicant. Clearance is denied.

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.