

KEYWORD: Foreign Influence

DIGEST: Although Applicant's ties to Sudan through his in-laws raise a foreign influence security concern, Applicant has successfully mitigated this concern. Until Applicant's interim secret security clearance was suspended as a result of these proceedings, he had been serving as an Arabic linguist accompanying U.S. Forces in Iraq. He personally participated in the identification and capture of a prominent official associated with the former Iraqi regime. Based on the totality of the circumstances, Applicant's ties to his in-laws do not pose an unacceptable risk or concern of foreign influence. Clearance is granted.

CASENO: 04-02184.h1

DATE: 01/12/2006

DATE: January 12, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02184

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

## **FOR APPLICANT**

Michael F. Van Hoomissen, Esq.

### **SYNOPSIS**

Although Applicant's ties to Sudan through his in-laws raise a foreign influence security concern, Applicant has successfully mitigated this concern. Until Applicant's interim secret security clearance was suspended as a result of these proceedings, he had been serving as an Arabic linguist accompanying U.S. Forces in Iraq. He personally participated in the identification and capture of a prominent official associated with the former Iraqi regime. Based on the totality of the circumstances, Applicant's ties to his in-laws do not pose an unacceptable risk or concern of foreign influence. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 4, 2005, DOHA issued a Statement of Reasons (SOR) [\(U\)](#) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on April 13, 2005, and elected to have a hearing before an administrative judge. DOHA received the case on August 11, 2005 and it was assigned to me the same day.

On August 11, 2005, DOHA issued a notice of hearing scheduling this case to be heard on September 29, 2005. On September 21, 2005, newly retained Counsel for Applicant requested the case be continued. On October 11, 2005, DOHA issued an amended notice of hearing scheduling this case to be heard on October 28, 2005. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the Government presented three exhibits, which were marked as Government Exhibits (GE) 1 through 3. GE 1 was admitted without objection. However, Counsel for Applicant objected to GE 2 and 3 on the grounds they were inadmissible under Federal Rules of Evidence 401, 402, 403, 801, 802, 804, 901 and 902. After argument by

Department Counsel, Counsel for Applicant objections were overruled. Tr. 16-20.

Applicant presented nine exhibits, which were marked as Applicant Exhibits (AE) A through I, without objection. DOHA received the transcript (Tr.) of the proceeding on November 9, 2005.

### **FINDINGS OF FACT**

Applicant is a 45-year-old Arabic linguist for a defense contractor. He was born in Egypt and raised in Sudan. In 1982, Applicant was awarded a bachelor's degree in law. He held a law license in Sudan, but did not practice. Instead, he worked for an international non-profit children's organization until he left Sudan. Tr. 64-66.

In November 1987, Applicant immigrated to the United States (U.S.) and initially lived with one of two uncles, who had previously immigrated to the U.S. from Egypt and became US citizens. After arriving in the U.S., Applicant attended welding school for two years. From January 1989 to December 1990, Applicant attended community college and is four hours short of receiving his associate's degree. GE 1, Tr. 63-64. From July 1991 to April 1998, Applicant worked as a welder. From April 1998 to December 2002, Applicant held a number of positions to include working in sales for three automobile dealers, was a pizza delivery driver, and had two brief periods of unemployment.

While in welding school, Applicant met his first wife, a U.S. citizen. Applicant was married to his first wife from December 1990 to July 1992. That marriage ended in divorce. In December 1998, Applicant became a naturalized U.S. citizen. Tr. 63.

In February 1999, Applicant traveled to Sudan for three months for the purpose of meeting and marrying his second wife, who was a citizen resident of Sudan. Tr. 35-36. In May 1999, they were married in Sudan and due to a delay in obtaining a visa, Applicant's wife was unable to join him in the U.S. until May 2001. Tr. 36. Applicant and his wife have two children, a three-year-old daughter, and a one-year-old son. Both children are native-born citizens. Applicant's wife holds a permanent resident alien card and is in the process of becoming a U.S. citizen. Tr. 55, AE G, AE H.

In January 2002, Applicant was granted an interim secret clearance. Tr. 63. From December 2002 to January 2004, Applicant was employed as an Arabic translator for a defense contractor and worked in several European countries, the

U.S., and Iraq as a member of a joint task force. In that capacity, he served as an Arabic interpreter and translator for the Free Iraqi Forces Training Team. Tr. 24. He accompanied U.S. forces and officials in the field and served as an interpreter. Tr. 66-67.

While in Iraq, he personally assisted in identifying, capturing, and arresting a prominent official associated with the former Iraqi Government, who was actively sought by U.S. Forces. Tr. 28-29. While in Iraq, Applicant participated in threat assessments and interacted directly with the Iraqis in a very volatile and dangerous environment. Many aspects of what he did in Iraq were classified and involved sensitive movements throughout the area of operations. Tr. 29-30. His U.S. Army commander formally recognized his performance by awarding him a Certificate of Achievement for meritorious achievement for service during the period of October 2002 through May 2003. He was also awarded a Certificate of Appreciation for exceptionally meritorious service for the period of January through April 2003. AE A.

Applicant's contract with his first defense contractor employer was coming to an end in December 2003. Before his contract expired, he was offered a better position with his current employer as an Arabic linguist. In January 2004, Applicant began employment with his second defense contractor employer. In June 2004, Applicant again deployed to Iraq and was a member of the Iraq Survey Group looking for weapons of mass destruction and later worked on a project to locate a missing U.S. pilot, seeking information about mass graves and the oil for food program. Much of the information Applicant worked on was classified. In April 2005 while in Iraq, Applicant received his SOR. Consequently, his clearance and employment were suspended and he was required to return to the U.S.. He was unemployed as of his hearing date. Tr. 69.

The director of the Iraq Survey Group presented Applicant with a Certificate of Appreciation covering the period from June 2004 to April 2005 for his "hard work and contributions while deployed in direct support of Operation IRAQI FREEDOM." AE B.

The chart below reflects pertinent information concerning Applicant's immediate family as well as information about his spouse's family.

Family Member	Citizenship/ Residency	Comments	Record
Applicant's father.	Citizen of Sudan. Permanent resident alien residing in U.S.	Lives with Applicant's sister.	Tr. 39, GE 1.
Applicant's mother.	Was citizen of Egypt and permanent alien residing in U.S.	Was living in U.S. as a permanent alien resident when she passed away in 1997.	Tr. 40, GE 1.
Applicant's brother #1.	Citizen of Sudan. Permanent resident alien residing in U.S.	Married with three US born children. Brother and wife applying for U.S. citizenship.	Tr. 40-41, GE 1.
Applicant's brother #2.	U.S. naturalized citizen resident.	Wife is U.S. citizen. No children.	Tr. 41, GE 1.

Applicant's brother #3.	U.S.. naturalized citizen resident.	Wife is U.S. citizen. Two U.S. born children.	Tr, 41, GE 1.
Applicant's sister #1.	U.S. naturalized citizen resident.	Has one U.S. born child.	Tr. 42, GE 1.
Applicant's sister #2.	U.S. naturalized citizen resident.	Married with six U.S. born children.	Tr. 42, GE 1.
Applicant's mother-in-law.	Citizen resident of Sudan.	Employed as an accountant.	Response to SOR, Tr. 56, 76.-77.
Applicant's father-in-law.	Citizen resident of Sudan.	Employed as mechanical engineer.	Response to SOR, Tr. 56, 76.
Applicant's sister-in-law.	Citizen resident of Sudan.	Employed as civil engineer.	Response to SOR, Tr. 56, 77.
Applicant's brother-in-law.	Citizen resident of Sudan.	College student studying building engineering.	Tr. 77.

As the above chart demonstrates, four out of five of Applicant's siblings are US naturalized citizen residents, and his father is a permanent resident alien living in the US. His non-US citizen brother is in the process of becoming a US citizen. No immediate family members of Applicant's family reside in a foreign country. Furthermore, none of Applicant's four in-laws residing in Sudan are associated with the Sudanese Government.

Neither Applicant nor any of his U.S. family members have any foreign financial interests in Sudan. Tr. 43. Applicant's wife has no property or assets in Sudan nor does she expect to inherit any property in Sudan. Tr. 85-86. Applicant's contact with his wife's family is limited to infrequent calls about once a month and are limited to exchanging pleasantries. Tr. 43-44, 84. Applicant is not involved with or associated with any religious or political group in Sudan. Tr. 47.

None of Applicant's in-laws in Sudan work for or are associated with the Government of Sudan nor are they associated with any terrorist groups in Sudan. Tr. 57, 60, 79-80. Applicant describes his in-laws as educated middle class people. Tr. 60. Lastly, Applicant's in-laws have applied for the visa diversity lottery to move to the U.S.. Applicant testified that once his wife obtains her U.S. citizenship, it will be easier for her to sponsor her parents' move to the U.S.. Tr. 58.

Applicant owns a home in the U.S. valued at approximately \$200,000.00 and has \$80,000.00 equity in the house. Tr. 58. He owns two automobiles and has a checking and savings account in the U.S. Tr. 68. Since becoming a U.S. citizen, Applicant has exercised his right to vote in the U.S. and exercised all other rights of U.S. citizenship. Tr. 59, 67-68.

## **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

### **Guideline B-Foreign Influence**

In the SOR, DOHA alleged Applicant's wife is a citizen of Sudan (¶ 1.a.), that his mother-in-law, father-in-law, sister-in-law, and brother-in-law are citizen residents of Sudan (¶ 1.b), and that Applicant traveled to Sudan in 1999 (¶ 1.c). A security risk may exist when an Applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the United States or may be subject to duress. 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 by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant's wife, who is currently a citizen of Sudan, and the presence of his in-laws in Sudan gives rise to Foreign Influence Disqualifying Condition (FI DC) 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.* While the

mere possession of family ties with persons in a foreign country is not, as a matter of law,

automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb 8, 2001). In this case, neither Applicant's wife nor his in-laws are agent of Sudan or associated with the Sudanese government. Applicant's wife lives in the U.S. and has taken all reasonable steps to become a U.S. citizen. It is just a matter of time before she completes the process. Applicant's in-laws in Sudan are educated people leading a middle class life. They are not agents of a foreign power, and are not employed by or associated with the Sudanese Government. They are attempting to get a visa through the diversity lottery offered by the State Department. Applicable is Foreign Influence Mitigating Condition (FI MC) 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.*

Applicant's limited association with his in-laws first occurred over a three-month period in 1999 when he visited Sudan for the purpose of meeting and marrying his wife. His present contact with his in-laws is limited to the occasional exchange of pleasantries when his wife places monthly telephone calls to her family. There is no record evidence that his contact with his in-laws extends beyond that. These facts give rise to FI MC E2.A2.1.3.3.: *Contact and correspondence with foreign citizens are casual and infrequent.*

Security clearance decisions are not an exact science. Instead, they are predictive judgments about an Applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U. S. At 528-29. Applicant is a loyal U.S. citizen, who has heavily vested his life and loyalty to his adopted country. Of note, Applicant has provided valuable service to U.S. Forces in Iraq as an Arabic linguist and his superb service has been formally recognized by his commanders. His linguist position with U.S. Forces in Iraq has placed him in harms way on numerous occasions. Noteworthy, he played an integral part in apprehending a suspected senior official associated with the former Iraqi Government.

Applicant's wife, who has taken all necessary steps to become a U.S. citizen, and his two U.S. born children reside in the U.S.. He owns property in the U.S., votes, and enjoys all the privileges of being a U.S. citizen. In short, Applicant is completely vested in the U.S. where he and his family have made their life. He held an interim secret security clearance for two years without incident and gained the trust and confidence of his employers and U.S. commanders in Iraq. Under the totality of circumstances, I find for Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline B: FOR APPLICANT



Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: 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. Clearance is granted.

**Robert J. Tuider**

**Administrative Judge**

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