

KEYWORD: Foreign Influence

DIGEST: Applicant is not potentially subject to foreign influence through his mother and siblings, who are citizens and residents of Sudan. He demonstrated that none of them were foreign agents or otherwise so situated as to present a pressure point on Applicant. Clearance granted.

CASE NO: 05-02548

DATE: 06/14/2006

DATE: June 14, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02548

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is not potentially subject to foreign influence through his mother and siblings, who are citizens and residents of Sudan. He demonstrated that none of them were foreign agents or otherwise so situated as to present a pressure point on Applicant. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 9 August 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence concerns.⁽¹⁾ He answered the SOR on 22 August 2005, and requested a decision without hearing. He responded to DOHA's 15 September 2005 File of Relevant Material (FORM) on 20 November 2005. The record closed 28 November 2005, when Department Counsel indicated no objection to the response. DOHA assigned the case to me 11 January 2006.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, and accordingly, I incorporate those admissions as findings of fact. He is a 55-year-old linguist for a defense contractor, and seeks access to classified information. He has been employed intermittently as a linguist with four different federal contractors since May 2003.⁽²⁾ He has not previously held a clearance. He needs a clearance to be deployed to the Persian Gulf region in support of military operations.

Applicant was born in the Republic of Sudan in 1950. He grew up in Sudan, and was educated there. After high school, he received a scholarship from the Greek government and financial aid from the Sudan government to attend a merchant

marine academy in Greece. He graduated from the academy in October 1975. In March 1976, he obtained employment as an apprentice officer with the Sudan Shipping Line and was continuously employed there--advancing to the rank of captain--until December 1992, when his services were terminated by executive decree of the Sudanese prime minister.

Sudan became independent from the United Kingdom and Egypt in January 1956. For all practical purposes, it has been engulfed in civil war since then. When Applicant worked for the Sudan Shipping Line, he was a member of the Sudanese Seaman Union and the Democratic Union Party. In June 1989, a military junta seized control of the government of Sudan and remains in power today. The Sudan Seaman Union and the Democratic Union Party opposed the Islamic law imposed by the new government, and staged many strikes after the coup. In December 1992, the prime minister issued an executive decree terminating the employment of the union. In August 1993, Applicant left Sudan, went to Greece, and was the chief officer of a Greek merchant vessel plying the Mediterranean Sea from November 1993 to June 1994.

In December 1994, Applicant immigrated to the U.S. and requested political asylum because of his activities with the Democratic Union Party. He was granted political asylum in April 1995, and became a naturalized U.S. citizen in November 2000--obtaining his U.S. passport the same day. His wife became a naturalized U.S. citizen in June 2003.

When he first arrived in the U.S., he worked in several entry-level jobs in hotel, restaurant, and service industries. He later worked as a security guard, including duty as a pre-departure passenger screener at a major airport in the U.S. in 2002. In his jobs as a linguist, he has served as a translator for the U.S. Army's Joint Task Force, GTMO, Guantanamo Bay, Cuba. His military commander, the Linguist Officer-in-Charge, Joint Interrogation Group, as well as his other military superiors gave him exemplary recommendations for his contributions to the Global War on Terrorism. His other character references extol his work ethic, honesty, and integrity.

Applicant's mother, three sisters, and a brother are citizens and residents of Sudan. He has a sister and two step-siblings who are citizens of Sudan residing in Egypt. His sister married an Egyptian. His step-siblings are dual citizens of Sudan and Egypt, because their mother is Egyptian and they now live in Egypt. His step-brother has worked for the U.S. Embassy in Cairo for twenty years. Applicant visited his family in Egypt in 1999, 2002, and twice in 2004. He visited his sick mother in Sudan in 2004. He said he felt safe in doing so because he was now a U.S. citizen.

Sudan is a military dictatorship with a pro-government parliament. All effective political power is in the hands of the president, who led the military coup that ousted the existing government in June 1989. Nevertheless, Sudan has been in a state of civil war or near-civil war since its founding in January 1956. The generally Arab, Islamic, north has been at loggerheads with the predominantly African, animist, south. The Islamic north has suffered political divisions internally as well. Sudan has a poor human rights record and is considered a rogue state by the U.S. for its past support of international terrorism--mostly by providing safe haven for terrorists. However, Sudan also has an inefficient military using outdated equipment. It would not be able to hold its own against various rebel groups in-country without the support of former-rebel and Arab militias. Its socialist economy is also inefficient. Sudan is not on the National Counterintelligence Center's list of most active nations engaging in foreign economic collection and industrial espionage.

U.S. interests in Sudan are counter-terrorism, regional stability, internal peace, protection of human rights, and humanitarian relief (particularly in the Darfur region).

POLICIES AND BURDENS

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽³⁾

CONCLUSIONS

Applicant's travel to Egypt (SOR 1.e.) and Sudan (SOR 1.d.) fails to establish any security concerns cognizable under

Guideline B. At best, the travel demonstrates some degree of closeness to his family members living there. Accordingly, I find SOR 1.d. and SOR 1.e. for Applicant. Similarly, government failed to establish any security concerns related to Applicant's family members residing in Egypt (SOR 1.c.). The State Department Background Note on Egypt submitted by the government establishes no basis for concern, and Department Counsel has articulated no reason why Applicant's relatives residing in Egypt raise security concerns. Accordingly, I find SOR 1.c for Applicant.

The Government established a potential case under Guideline B, by demonstrating that Applicant's parents and siblings are citizens and residents of Sudan.⁽⁴⁾ However, Applicant mitigated the resulting security concerns. Although Applicant's immediate family members are citizens and residents of Sudan, none are agents of Sudan, and none are in a position to be exploited by Sudan against Applicant.⁽⁵⁾ The political, economic, racial, and religious unrest in Sudan makes it a dangerous, unstable place to live. But in order for Applicant's family members to be in a position to be used as a pressure point on Applicant--whether benign or malevolent--there must be a government or other entity ready, willing, and able to collect intelligence and use it. Sudan lacks the ability to look beyond its borders (except perhaps to its immediate neighbors providing haven for its rebel groups) given its focus on dealing with internal rebellion and turmoil. Further, Applicant has demonstrated through his deployment to Guantanamo Bay and his willingness to be deployed to the Persian Gulf region a commitment to serving U.S. interests by going into harms way under circumstances that differ little from those experiences by U.S. forces in the field. It is unlikely that Applicant can be influenced by his relatives residing in Sudan. Accordingly, I conclude Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

DECISION

In light of all 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 granted.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. The government's evidence on this issue is unclear. The FORM contains two clearance applications, neither of which is signed, dated March 2005 and May 2005. The March 2005 application lists Applicant's current employer correctly (the company and address through which Applicant received the SOR). The May 2005 applicant shows Applicant working for the same company as a linguist continuously since May 2003.
3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. 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;
5. 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 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.