

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a dual citizen of the U.S. and Sudan. He was born in Sudan and naturalized as a U.S. citizen in June 2000. He has not exercised his Sudanese citizenship since becoming a U.S. citizen. His mother, two siblings, father-in-law, mother-in-law, and half-brother are citizens and residents of Sudan. He co-owns property worth about \$100,000 in Sudan. He has provided virtually no information about his family ties or property interests in Sudan. Applicant has refuted the allegation of foreign preference, but he has not mitigated the security concerns based on foreign influence. Clearance is denied.

CASENO: 05-02741.h1

DATE: 03/31/2006

DATE: March 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02741

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a dual citizen of the U.S. and Sudan. He was born in Sudan and naturalized as a U.S. citizen in June 2000. He has not exercised his Sudanese citizenship since becoming a U.S. citizen. His mother, two siblings, father-in-law, mother-in-law, and half-brother are citizens and residents of Sudan. He co-owns property worth about \$100,000 in Sudan. He has provided virtually no information about his family ties or property interests in Sudan. Applicant has refuted the allegation of foreign preference, but he has not mitigated the security concerns based on foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On September 29, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to not grant a security clearance to Applicant. ⁽¹⁾ The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). Under Guideline C, it alleges Applicant exercises dual citizenship with Sudan and the U.S. (SOR ¶ 1.a.). Under Guideline B, it alleges Applicant's mother (¶2.a.), two siblings (¶ 2.b.), father-in-law and mother-in-law ((¶ 2.c.), and half-brother (¶2.d.) are all citizens and residents of Sudan. It also alleges Applicant co-owns property in Sudan worth about \$100,000 (¶ 2.e.). Applicant answered the SOR in writing on October 18, 2005. Under Guideline C, he admitted holding, but not exercising, dual citizenship. Under Guideline B, he admitted all the allegations. He elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 5, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on January 12, 2006, and did not respond. The case was assigned to me on March 2, 2006.

FINDINGS OF FACT

Based on the entire record, I make the following findings of fact:

Applicant is a 43-year-old linguist who has been employed by a defense contractor since January 2003. He was born in Sudan, came to the U.S. in October 1996, and became a naturalized U.S. citizen in June 2000. He has never held a security clearance. [\(2\)](#)

Applicant used a Sudanese passport to enter the U.S. in October 1996. It expired in 1997, well before he became a U.S. citizen or applied for a security clearance. He did not renew it. [\(3\)](#)

Applicant's mother, two siblings, father-in-law, mother-in-law, and half-brother are citizens and residents of Sudan. There is no information about them in the FORM except for names, addresses, dates of birth, and Applicant's conclusory statement that none of them are agents of a foreign power or in a position to be exploited by a foreign power in any way. [\(4\)](#) All his family members appear to live in or around the capital city of Khartoum. [\(5\)](#)

Applicant co-owns inherited property in Sudan worth about \$100,000. He characterizes his financial interest in the property as "minimal." [\(6\)](#)

Sudan is a military dictatorship. Although it has a parliament, all effective political power rests with the president. [\(7\)](#) It is a lawless and dangerous country, particularly outside Khartoum. [\(8\)](#) Sudan was designated by the U.S. State Department as a state sponsor of terrorism in August 1993. [\(9\)](#) Since 2003, Sudan has deepened its cooperation with the U.S. in combating terrorism. [\(10\)](#) It has an extremely poor human rights record. [\(11\)](#)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as

amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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; *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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline C (Foreign Preference)

When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1. A disqualifying condition may arise if an individual exercises dual citizenship (DC 1). Directive ¶ E2.A3.1.2.1. Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under this guideline, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions." ISCR Case No. 98-0252 at 5 (App. Bd. Sep 15, 1999). Applicant has not exercised Sudanese citizenship since becoming a U.S. citizen. I conclude DC 1 is not established, and I resolve the security concern under this guideline in favor of Applicant.

Guideline B (Foreign Influence)

A security risk may exist when an applicant's immediate family, or 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. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], 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." Directive ¶ E2.A2.1.2.1. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant's admission that his immediate family members and in-laws are citizens and residents of Sudan establishes DC 1.

A "substantial financial interest in a country" also may be a disqualifying condition (DC 8). Directive ¶ E2.A2.1.2.8. Applicant's admission he co-owns property worth about \$100,000 establishes DC 8.

Since DC 1 and DC 8 are established, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

In cases where an applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members, 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." Directive ¶ E2.A2.1.3.1. Since Applicant presented no mitigating evidence regarding his family ties, MC 1 is

not established.

When financial interests in a foreign country are involved, security concerns can be mitigating by showing they "are minimal and not sufficient to affect the individual's security responsibilities" (MC 5). Directive ¶ E2.A2.1.3.5. Other than characterizing his interest as "minimal," Applicant provided no information about the nature of the property, his interest in it, or the co-owner. The financial significance of his interest in the property cannot be determined, because he has provided no information about his overall financial status. I conclude MC 5 is not established.

Considering the absence of mitigating evidence, I conclude Applicant has not mitigated the security concern based on foreign influence.

FORMAL FINDINGS

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

Paragraph 1. Guideline C (Foreign Preference): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. This action was taken under Executive Order 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 (Directive).
2. FORM Item 4 at 1, 3; Item 6 at 1.
3. FORM Item 5; Item 6.
4. FORM Item 3; Item 4 at 8-10.
5. FORM Item 4 at 8.
6. FORM Item 3 at 2.
7. FORM Item 9 at 1, 8.
8. FORM Item 7, 8.
9. FORM Item 11.
10. FORM Item 10 at 7.
11. FORM Item 12 at 1.