

KEYWORD: Foreign Influence

DIGEST: Applicant's grandmother, two brothers and a sister are citizens and residents of Sudan. His parents and three sisters are citizens of Sudan residing in the United Arab Emirates (UAE), and his mother is employed by the UAE school system. He has not mitigated the security concern based on foreign influence. Clearance is denied.

CASE NO: 05-10108.h1

DATE: 06/22/2006

DATE: June 22, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-10108

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

John Bayard Glendon, Esq., Department Counsel

James B. Norman, Esq., Department Counsel

**FOR APPLICANT [\(u\)](#)**

*Pro Se*

**SYNOPSIS**

Applicant's grandmother, two brothers and a sister are citizens and residents of Sudan. His parents and three sisters are citizens of Sudan residing in the United Arab Emirates (UAE), and his mother is employed by the UAE school system. He has not mitigated the security concern based on foreign influence. Clearance is denied.

**STATEMENT OF THE CASE**

On November 22, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. The SOR alleges security concerns under Guideline B (Foreign Influence). It alleges Applicant's two sisters, two brothers, and grandmother are citizens and residents of Sudan (SOR ¶ 1.a), his three roommates are citizens of Sudan (¶ 1.b), he has traveled to Sudan (¶ 1.c), his parents and two sisters are citizens of Sudan residing in the United Arab Emirates (UAE) (¶ 1.d), and he has traveled to the UAE (¶ 1.e).

Applicant answered the SOR in writing on December 21, 2005, partially denied the allegations in ¶¶ 1.a and 1.b, admitted the remaining allegations, and requested a hearing. The case was assigned to me on February 27, 2006. On March 7, 2006, DOHA issued a notice of hearing setting the case for April 27, 2006. The case was heard as scheduled. I kept the record open until May 8, 2006, to enable Applicant to submit an affidavit from his supervisor, but he submitted no post-hearing evidence. DOHA received the transcript (Tr.) on May 5, 2006.

**FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the

following findings:

Applicant is a 33-year-old security officer for a federal contractor. He has worked for his current employer since July 2004.<sup>(2)</sup> He has never received a security clearance.

Applicant was born in Khartoum, Sudan. He left Sudan with his family when he was ten years old, and went to the UAE, where he completed his elementary and high school education. He returned to Sudan in 1990 to attend the University of Khartoum, but he was dismissed from the University in 1994 for participating in a protest against the university examination policy and the government's educational and political philosophy. He then moved to the Republic of Ukraine, where he studied civil engineering. He returned to his family in the UAE in 1997. In February 1999, he emigrated to the U.S. He served on active duty in the U.S. Army from April 1999 to August 2002, and he was honorably discharged as a sergeant (pay grade E-5).<sup>(3)</sup> While on active duty he received excellent evaluation reports and numerous awards, decorations, and commendations.<sup>(4)</sup> He became a naturalized U.S. citizen in December 2002.<sup>(5)</sup>

Applicant's parents are citizens of Sudan residing in the UAE.<sup>(6)</sup> His father is a retired veterinarian, and his mother is a high school English teacher in the UAE school system.<sup>(7)</sup> His mother taught in a public school in Khartoum before moving to the UAE.<sup>(8)</sup> Applicant's father was a government employee when he worked as a veterinarian in Sudan, and he receives a pension from Sudan, but he now works in the private sector in the UAE.<sup>(9)</sup>

One of Applicant's sisters and his two brothers are citizens and residents of Sudan, where they attend college. They attend college in Sudan instead of the UAE because it is much less expensive.<sup>(10)</sup> His other three sisters are citizens of Sudan residing in the UAE.<sup>(11)</sup> His family members reside in the UAE on a temporary business visa, subject to termination at will by their employers.<sup>(12)</sup> His grandmother is a citizen and resident of Sudan.<sup>(13)</sup> She has never been employed outside the home, but she receives a pension as the widow of a Sudanese policeman.<sup>(14)</sup>

Applicant has traveled twice to Sudan and three times to the UAE to visit his family.<sup>(15)</sup> Applicant talks with his parents and siblings by telephone every two or three weeks and maintains e-mail contact with one sister.<sup>(16)</sup> He aspires to have his siblings emigrate to the U.S.<sup>(17)</sup>

When Applicant answered the SOR, he had two roommates, one a U.S. citizen and the other a Sudanese citizen who was a permanent U.S. resident. He now has only one roommate, a U.S. citizen, whose mother and two siblings live in Sudan.<sup>(18)</sup> He testified his roommate is "kind of a friend," but they do not socialize together, and Applicant knows little about his roommate's family.<sup>(19)</sup>

Sudan has an authoritarian government. It has been designated as a state sponsor of terrorism since August 1993. Its relations with the U.S. are poor because of its human rights violations, war policy in the south, and its support for international terrorism. Travel in the south of Sudan is dangerous because of ethnic and sectarian violence. Sudan's human rights record is poor because of continuing genocide in Darfur, unlawful killings by government security forces and government-allied militias, physical abuse by security forces, harsh prison conditions, arbitrary arrest and detention, and executive interference with the judiciary. A wide network of government informants conducts surveillance in schools, universities, markets, workplaces, and neighborhoods, and the government harasses university student groups. [\(20\)](#)

The UAE is a federation of seven independent emirates. The federal government is a constitutional republic based on Islamic ideals and beliefs. It has no democratically elected institutions or political parties. Freedom of speech, assembly, and religion are restricted. Incommunicado detention is lawful and has been used in sensitive criminal cases. About 85 percent of the country's population are expatriates. [\(21\)](#)

The U.S. has friendly relations with the UAE. Private commercial ties have developed into government ties, including security assistance. Relations were strengthened during the U.S.-led coalition's campaign to expel Iraq from Kuwait. The UAE has been a key partner of the U.S. in the war on terror. [\(22\)](#)

## **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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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

The concern under Guideline B is that 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. Applicant's family ties

in Sudan and the UAE establish DC 1.

A disqualifying condition (DC 2) may arise if an applicant is "[s]haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists." Applicant no longer resides with foreign citizens. His current roommate is a naturalized U.S. citizen with family members in Sudan. However, Applicant does not have a close personal relationship with his roommate and knows little about his family. I conclude DC 2 is not established, and I resolve SOR ¶ 1.b for Applicant.

A disqualifying condition (DC 3) may arise if an individual has relatives "who are connected with any foreign government." Directive ¶ E2.A2.1.2.3. Applicant's parents formerly were employed by the Sudanese government. His father now works for a private employer in the UAE, but his mother is employed by the UAE public school system. I conclude DC 3 is not established for his father, but it is established for his mother.

Since the government produced substantial evidence to establish DC 1 and DC 3, 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.

Notwithstanding the facially disjunctive language of MC 1("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004) The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant's father, siblings, and grandmother are not agents of a foreign power under either the statutory definition in 50 U.S.C. § 1801(b) or the broader definition apparently adopted by the Appeal Board. *See* ISCR Case No. 02-24254, 2004 WL 2152747 at \*4-5 (App. Bd. Jun. 29, 2004) (employee of foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of MC 1).<sup>(23)</sup> Thus, I conclude the first prong of MC 1 is established for those family members. However, it is not established for his mother because her employment by the UAE brings her within the broad definition adopted by the Appeal Board.

MC 1 is not established for Applicant's grandmother and siblings living in Sudan, which has a poor human rights record and is a state sponsor of international terrorism. The Sudanese government has a record of targeting and harassing college students like Applicant's siblings. His grandmother is dependent on the Sudanese government for her pension. No other mitigating conditions are established for these family members. I resolve SOR ¶ 1.a against Applicant.

Applicant's parents and some of his siblings work and reside in the UAE, a country closely allied with and friendly to the U.S. While the UAE has a patriarchal government and restricted personal rights, it does not engage in espionage against the U.S. The governmental and commercial ties between the U.S. and the UAE are strong and deep. The nature of the UAE's government, its human rights record, and its relationship with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining whether the UAE would risk damaging its relationship with the U.S. by exploiting or threatening expatriate private citizens of Sudan in order to force a U.S. citizen to betray the U.S. I conclude MC 1 is established for Applicant's siblings living in the UAE, but not for his parents. His mother's government employment negates the first prong of MC 1, and his father's Sudanese pension negates the second prong of C 1 because it makes him vulnerable to duress or coercion from the Sudanese government, even though he now lives and works in the UAE. I resolve SOR ¶ 1.d against Applicant.

Applicant's travel to Sudan and the UAE was related solely to his family relationships and has no independent security significance. I resolve SOR ¶¶ 1.c and 1.e in his favor.

Applicant is a loyal and trustworthy citizen of the U.S. who served in the Army with distinction. He aspires to bring his siblings to the U.S. His sincerity and honesty were obvious during the hearing. He has mitigated the security concern based on his three siblings living in the UAE. Nevertheless, I must consider the totality of Applicant's family ties as well as individual ties. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, 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 B (Foreign Influence): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For 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. The case caption reflects Applicant's full name, even though the Statement of Reasons (SOR) lists only his middle initial.
2. Government Exhibit (GX) 1 at 1-2.
3. Applicant's Exhibit (AX) B.
4. AX D through L.
5. Tr. 45-46, 54.
6. Tr. 50-51.
7. Tr. 45.
8. Tr. 59.
9. Tr. 57.
10. Tr. 71-72.
11. Tr. 69.
12. Tr. 51.
13. *Id.*, Answer to SOR.
14. Tr. 66-67.
15. Tr. 47, 51.
16. Tr. 64, 73.
17. Tr. 73-74.
18. *Id.*
19. Tr. 87.
20. Hearing Exhibit (HX) I at 1; HX III at 1, 6, 10; HX V at 3, 4, 16; HX VIII at 1.
21. HX IX at 1, 2, 6; HX XI at 1.
22. HX X at 5.
23. The Appeal Board has declined to reexamine its broad definition of "agent of a foreign power," but it has not addressed the applicability of 50 U.S.C. § 438(6), which expressly applies the definitions in 50 U.S.C. § 1801(b) to

security clearance determinations.