



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-04242

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: James N. Apostle, Esq.

June 24, 2008

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On December 28, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on January 25, 2008, and requested a hearing. The case was assigned to me on February 14, 2008, and was scheduled for hearing on April 9, 2008. A hearing was held on April 9, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on one witness (himself) and three exhibits. The

transcript (R.T.) was received on April 17, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

Besides its two exhibits, the Government requested administrative notice of 10 documents: *Background Note: Sudan*, U.S. Department of State (January 2008); *Country Specific Information*, U.S. Department of State (August 2007); U.S. Department of State (August 2007); *Travel Warning, Sudan*, U.S. Department of State (September 2007); *The U.S. Response to the Darfur Crisis*, U.S. Department of State (October 2007); *Country Reports on Human Rights Practices - 2006, Sudan* (March 2007); *State Sponsors of Terrorism*, U.S. Department of State (November 2007); *Country Reports on terrorism, Chapter 3 - State Sponsors of Terrorism Overview*, U.S. Department of State (April 2007); *Overview of Treasury and Commerce Regulations Affecting U.S. Exports to Sudan*, U.S. Department of State (March 2007); *Blocking Sudanese Government Property and Prohibiting Transactions with Sudan*, Executive Order 13067, 62 Federal Register 59989-59990 (November 2007); *Blocking Property of and Prohibiting Transactions with the Government of Sudan*, Executive Order 13412, 71 Federal Register 61369-61371 (October 2006).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 2007); ISCR Case No. 02-24875 (App. Bd. October 2006). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Sudan. *Administrative notice was extended to the documents themselves*, consistent with the provisions of Rule 201 of Fed. R. Evi. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Sudan's current state.

SUMMARY OF PLEADINGS

Under Guideline B, Applicant is alleged to (a) have a brother and three sisters who are citizens and residents of Sudan; (b) send \$500.00 a month to his siblings in Sudan to assist them; (c) have a father-in-law and mother-in-law who are citizens and residents of Sudan, (d) have a brother who is a citizen of Sudan and resides in the United Arab Emirates; and (e) have returned to Sudan in 1996 to marry his spouse. For his answer to the SOR, Applicant denied all of the allegations in the SOR without any explanations.

FINDINGS OF FACT

Applicant is a 52-year-old linguist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in Sudan and attended high school there. Between 1973 and 1980, he was a professional soccer player; albeit, he never played for Sudan's national soccer team (R.T., at 29). For about 10 years (between 1976 and 1986), he worked for a civilian aviation company in Sudan (R.T., at 29, 87). In 1986, he immigrated to the U.S., and has had no further contact with his former Sudan employer. Soon after his arrival in the U.S., he began working part time jobs, and applied for U.S. citizenship. Applicant was sworn in as a naturalized U.S. citizen in 1990 (R.T., at 30). He retains his dual citizenship with Sudan (see ex. 1). Applicant has several years of college credits, but no degrees to date (R.T., at 28). He expressed interest in returning to college at some time, but to date he has not done so.

Applicant's parents are deceased (R.T., at 28-29). He has three brothers and two sisters who are citizens of Sudan. One brother owns a private business and resides in Sudan (see ex. 2; R.T., at 36). Another works for a private company, resides in the United Kingdom, and recently became a British citizen (R.T. at 35-38); and a third works for a government sponsored agency in the United Arab Emirates (R.T., at 31). Applicant maintains weekly to monthly contact with his brothers and sisters (see ex. 2). None of his siblings have ever worked for the Sudan government or have any interests in politics (ex. 2). And no government or military officials have ever tried to exert any pressure or influence over his family and work (R.T., at 40-41). Both of Applicant's two sisters reside in Sudan. One is a kindergarten teacher who is married (R.T., at 32-33). The other is a homemaker who is divorced (R.T., at 32).

Applicant last traveled to Sudan in May 1996 to apply for his spouse (W) to immigrate to the U.S (see ex.2). W was born and raised in Sudan but moved to Saudi Arabia with her parents when she was 11 (R.T., at 64). W attended Saudi schools through high school. She earned an accounting degree from an Egyptian college. After earning her degree, she returned to Saudi Arabia to work (R.T., at 65-67). Applicant met W while he was working in Saudi Arabia and married her there in early 1996 (see ex. 1; R.T., at 67).

After his marriage, applicant briefly returned to the U.S. Applicant returned to Saudi Arabia in 1996 to file his application papers to bring her to the U.S. The U.S. Embassy refused to accept his marriage certificate and advised him that he needed to obtain a certified marriage certificate from a Saudi court. Because he could not establish residency in Saudi Arabia, the Saudi court would not certify his marriage certificate either (R.T., at 41-42). His only open choice at this time was to travel with his wife (who had a Sudanese passport) to Sudan to obtain a certified marriage certificate that would enable him to bring her to the U.S. Applicant obtained the certificate and returned to the U.S. with W. He has not been back to Sudan since his 1996 trip (R.T., at 42). Once W immigrated to the U.S., she applied for U.S. citizenship. She became a naturalized U.S. citizen in June 2002 (ex. 1).

Applicant sends \$500.00 a month to his siblings in Sudan for their necessities (see ex. 2; R.T. at 42-43). He owns no real estate in Sudan and has no business interests in the country (R.T., at 43). He has three daughters from his marriage to W (all born in the U.S.). They attended public schools for several years, but currently attend private schools (R.T., at 46).

Once qualified as a linguist for the Army, Applicant located to Iraq to work (in November 2005). He worked in Iraq for a little over two years, translating Arabic documents to English, and English to Arabic (R.T., at 61-62). He has never been contacted by Sudan officials about taking adverse positions against the U.S. (R.T., at 48). He returned to the U.S. in August 2007 after his interim clearance was revoked. He claims no conflicting loyalties to Sudan, however, and would like to return to Iraq to further his linguist work.

W's parents are Sudanese citizens by birth who currently reside in Egypt. Her father, once a communications engineer in Sudan, moved to Saudi Arabia in 1984 and went to work for the Saudi military (R.T., at 71-72). He retired in 2000 and to Sudan for a brief period before moving to Egypt with Applicant's mother (a homemaker) about 10 months ago (R.T., at 74). He received a lump sum pension from his Saudi military employer and receives no other pensions to Applicant's knowledge (R.T., at 75). W sends her parents \$200.00 a month for necessities. She maintains regular contact with them (generally around twice a month). Applicant talks to her parents occasionally when he is at home (R.T., at 75-76).

W last visited her parents in August 2007 (following their move to Egypt). She visited her parents in the Sudan only once since she immigrated to the U.S. (in 2001) (R.T., at 77). W has three brothers and three sisters, all of whom reside in Sudan. The oldest brother drives a bus for a private company (R.T., at 78-79). Another brother is a banker who has resided in Sudan since he moved there from Saudi Arabia in 2000 (R.T., at 79). A third brother recently graduated from high school in Sudan and is trying to open his own insurance company (R.T., at 79). W's remaining two brothers reside with her parents in Egypt. Of W's three sisters, the oldest lives and works in Saudi Arabia. Her other sisters are homemakers who have resided in the U.S. since 2000 and 2002, respectively (R.T., at 81-82). W maintains monthly contact with her brothers in Sudan and Egypt, as well as her sister residing in Saudi Arabia (R.T., at 83-84). None of Applicant's brothers ever served in the Sudan military or government (R.T., at 86).

Besides his siblings, Applicant has a cousin, two aunts, and an uncle who reside in Sudan. None work for the Sudan government. He occasionally talks to these relatives (who reside with his brother) when he speaks to his brother (R.T., at 94). Applicant has had no involvement in the civil strife that has consumed Sudan ethnic groups for years (R.T., at 95-96). He described most of the strife as confined to the southeast sector of the country (the Darfur region).

Applicant has no reason to believe any of his siblings and other family members residing in Sudan are at any risk to influence or pressure from the Sudanese military and

government officials (R.T., at 102). He has not been to Sudan in many years and knows nothing about Sudan's intelligence service (R.T., at 103). He has had no feedback from other linguists in his organization about Sudanese intelligence gathering.

Applicant is highly regarded by his neighbors and coworkers who have worked with him in Iraq (see exs. A through C). All of his references express confidence in his reliability and trustworthiness.

Sudan's country status

With one of the most diverse populations in all of Africa, Sudan is comprised of two major cultures-Arab and Black Africa-with hundreds of ethnic and tribal subdivisions and language groups. This diverse population mix presents major challenges to collaborative efforts. See *Background Note: Sudan*, U.S. Department of State, at 2 (January 2008).

Historically, Sudan was once a collection of small independent kingdoms and principalities, dating to the Christian era and ending with Egypt's vanquishing and unifying the northern sectors of the region in the 1820s (see *id.*). Egypt never did establish any effective control over the southern regions, which remained an area of disparate tribes subject to frequent attacks by slave traders (see *id.*).

For a brief period in the early 1880s, Sudan was ruled by a religious leader who proclaimed himself the Mahdi. The Mahdi had led a nationalist revolt against the Ottoman-Egyptian government that culminated in the fall of Khartoum in 1885. Despite his death shortly thereafter, the Mahdi's state survived several more years before succumbing to an invading Anglo-Egyptian force under Lord Kitchener in 1898 (see *id.*, at 3). Following their successful invasion, Egypt and Britain administered Sudan jointly for a number of years, with Britain assuming management control and policy formulation of Sudan (see *id.*).

In February 1953, Britain and Egypt concluded an agreement that assured self-government and self determination for Sudan (see *Background Note: Sudan*, U.S. Department of State, *supra*, at 3). Since gaining its independence, Sudan has endured continuous wars within its borders. Most of its civil strife is rooted in deep cultural and religious differences that have stunted the economic and political development of its non-Muslim peoples to the South and West. Northerners who have controlled the country since independence have pursued uniting policies based on Arabism and Islam over the opposition of southerners and marginalized peoples to the South, East and West (see *id.*, at 3-4).

Following a brief return to civilian government after the overthrow of the repressive Nimeiri regime, General al-Bashir and his Islam army faction mounted a military coup and installed the National Islamic Front (see *id.*, 4). General al-Bashir's government committed to Islamism, which only served to intensify the north-south conflict.

Under General al-Bashir's regime, Sudan became less and less responsive to the grievances of Muslim and non-Muslim populations outside his northern political base. The al-Bashir government continued its internal political repression against non-Muslim groups and added its support to Islamist groups in Algeria, and to Iraq's invasion of Kuwait (*id.*, at 5).

Regional efforts to broker a cessation of the Sudanese civil war between the north and south/west provinces of the country were numerous throughout the 1990s (*see id.*). Despite these brokered efforts, peace prospects in Sudan remained fairly remote by 2001. Peace prospects initiated in 2002, however, produced an executed declaration between the Sudan government and the Sudan People's Liberation Movement/Army (SPLM/A) that committed the government and the rebel group to a final comprehensive peace agreement in December 2004 (*see id.*).

In January 2005, the al-Bashir government and the SPLM/A completed a comprehensive peace agreement (CPA), establishing a new government of national unity and the interim government of Southern Sudan. Implementation of key provisions by the peace agreement failed to materialize. With the collapse of the peace agreement, rebellion in Darfur ensued. This resulted in the deaths of tens of thousands of Darfur inhabitants and mass internal displacement of two million persons in the Sudan, and 234,000 refugees in neighboring Chad (*see id.*, at 6-8). Without question, the Sudanese government is complicit in the bombing, murder and rape of innocent civilians (which include women and children living in aid camps) in Darfur, and bears principal responsibility. *See The U.S. Response to the Darfur Crisis*, U.S. Department of State (October 2007). The State Department charged President al-Bashir with demonstrating "a continued refusal to honor his commitments to end the violence in Darfur (*see id.*).

Sudan was designated a state sponsor of terrorism by the U.S. State Department in August 1983, and remains on the State Department's list of State sponsors of terrorism (*see id.*, at 9). Sudan is under a broad U.S. embargo, and is subject to the Treasury Department's extensive trade restrictions on exports and re-exports to this country. *See Overview of Treasury and Commerce Regulations Affecting U.S. Exports to Sudan*, U.S. Department of State, at 1 (March 2007). These restrictions were eased, but not removed under the recently concluded Darfur Peace and Accountability Act (*id.*). Executive orders issued by both President Clinton (E.O. 13067) and President Bush (E.O. 134120) cite Sudan's human rights abuses as proof of the country's posing an unusual continuation of a threat to the national security and foreign policy of the U.S. Compare E.O. 130687 (*Blocking Sudanese Government Property and Prohibiting Transactions with Sudan*, Executive Order 13067), 62 Federal Register 59989-59990 (November 2007) with E.O. 13412 (*Blocking Property of and Prohibiting Transactions with the Government of Sudan*, Executive Order 13412, 71 Federal Register 61369-61371 (October 2006).

Sudan today is governed according to a power sharing arrangement established by the January 2005 CPA, which was supposed to end the 22-year old civil war between the north and the south. *See Country Reports on Human Rights Practices - 2006*,

Sudan (March 2007). The CPA established an interim government of national unity, which is composed of the National Congress Party (NCP), and is dominated by Islamists from the north, and is ruled by an authoritarian president (Omar al-Bashir).

Human rights continues to be a serious problem in Sudan. The State Department's report on human rights in the Sudan paints a grim picture. Despite the signing of the CPA in 2005, sporadic violence continued to occur in the south (see *Country Reports on Human Rights Practices - 2006, Sudan, supra*). Militias aligned with the SAF and the SPLM/A, as well as the increasing non-aligned militias, continued to wage violent attacks on each other's ranks in the Darfur region (see *id.*). The al-Bashir government bears ultimate responsibility for extraordinary human rights abuses that have exploded on all fronts: rape, violence, hunger, displacement and looting. Human rights abuses include harsh prison conditions, arbitrary arrest and detention, including incommunicado detention of suspected government opponents and prolonged pre-trial detention, executive interference with the judiciary, denial of due process, widespread prostitution, trafficking in persons, and harassment of journalists and religious groups (*id.*, at 8-12).

Recent UN peacekeeping reports cite evidence of systematic rape of women and children in Darfur as particularly troubling. The region today has rapidly turned into a virtual free-for-all that has placed in jeopardy basic UN relief missions (see *Country Reports on Human Rights Practices - 2006, Sudan, supra*, at 8-11). While the al-Bashir government and its loosely aligned militias have continued their attacks on local villages in the regions, Darfur has become a center of organized crime and warlordism that embraces marijuana-smoking rebels, disaffected government militias, and rogue bandits brandishing AK-47 weapons. All of these symptoms reveal how fragmented the fighting has become in Darfur. Where there were once two principal rebel groups (SPLM/A and Justice and Equality Movement (JEM)) in Darfur (*id.*, at 1), there are now dozens, some which include Arab militiamen that once sided with the al-Bashir government.

Along with rape and pillaging of women and children, the proliferation of banditry has come to pose a major threat to UN-African Union humanitarian groups operating in the region. Carjackings, once rare, are now commonplace and victimize not only local populations, but major relief donors operating food distribution programs in Darfur. Conditions today in Darfur indeed reflect a marked change from the beginning of the conflict in 2003, when the al-Bashir government unleashed its aggression to crush the rebels operating in the south and west of the country under the banner of ending decades of discrimination by a government of Arab elites. Though Arab and African ethnicities are very intertwined in Sudan, the al-Bashir government fanned Arab nationalism and money as a way to rally the landless, Arab nomadic militias against their farmer neighbors who identified themselves more as African. U.S. efforts in pressing for strong UN-African Union action have been largely frustrated by events and conditions that have witnessed disillusioned janjaweed militia, abandoned by the government, actively joining forces with rebels and government soldiers in the expanding business of looting, carjacking, and petty shakedowns (see *Background Note: Sudan, U.S. Department of State, supra*, at 7).

U.S. citizens are continually cautioned by the State Department to avoid travel to Sudan. See *Travel Warning, Sudan*, U.S. Department of State (September 2007). Considered especially dangerous to U.S. citizens is the Darfur area (see *id.*). Americans and other westerners have been targets of carjackings and armed robberies while traveling in Sudan. Terrorist actions may include suicide operations, bombings, or kidnappings (*id.*). Travelers are reminded of reports of terrorist threats directed at Americans and western interests in Sudan, and to avoid travel outside of the capital city of Khartoum and the adjacent town of Obdurman (see *Country Specific Information*, U.S. Department of State (August 2007). Travel outside of these major cities remains hazardous (see *id.*, at 2).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: "Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism" (see Adjudicative Guidelines, ¶ 6).

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires

administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

ANALYSIS

Born and raised in Sudan, Applicant became a naturalized U.S. citizen in 1990. He married his wife in 1996 and brought her to the U.S. the same year. She applied for U.S. citizenship shortly after her arrival in the U.S., and became a naturalized U.S. citizen in 2002. Security concerns focus on Applicant's siblings who currently reside in Sudan and Saudi Arabia, respectively, and his wife and family members who have Sudan citizenship and residency in Sudan and Egypt, respectively. Applicant and his wife and family have deep roots in Sudan, a country historically known to practice terrorism and genocide, and to exercise ruthless repression and human rights abuses against its own citizens.

The Government urges security concerns over risks that Applicant's siblings and family members, as well as his wife and her family members residing in Sudan and Egypt, might be subject to undue foreign influence by Sudan government authorities to access classified information in Applicant's possession or control. Because Applicant and his wife have family members who have Sudan citizenship by birth and reside currently in either Sudan, or Egypt or Saudi Arabia, they present potential heightened security risks covered by disqualifying condition (DC) 7(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these family members in Sudan and neighboring countries pose some potential concerns for Applicant because of the risks of

undue foreign influence that could compromise sensitive or classified information under Applicant's possession and/or control.

Because none of Applicant's family or W's family have any identified prior military or government service, no consideration of DC 7(b), "connection to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," is warranted. To be sure, from what is known from the presented evidence, none of W's immediate family residing in Sudan have any political affiliations with the Sudan government or military, have any history to date of being subjected to any coercion or influence, or appear to be vulnerable to the same.

Still, upon fully considering Applicant's explanations about his siblings and family members residing in Sudan, and his wife's dual Sudan citizenship and deep family roots in Sudan (which include all of her siblings who still reside there), risks of undue foreign influence on Applicant, his own siblings, his wife and her family members residing in Sudan and Egypt, respectively, Applicant/W's contacts with their family members appear to be substantial and ongoing, and clearly of the magnitude that could make them subject to a heightened security risk of pressure or compromise under Guideline B.

Sudan, a country reported to be a continuous state of civil war with its ethnic populations of Darfur, continues to be a very repressive state that is historically burdened with a poor human rights record and respect for the rule of law. Not only is Sudan a reported repressive state who has targeted ethnic people to the South for various human rights abuses, but it is known to be very dangerous to Americans and westerners traveling outside the main cities of the country.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Sudan.

Unlike the old Adjudicative Guidelines, the new ones do take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter. As demonstrated, Sudan has long been known to be a repressive country, who for decades has been involved in a ruthless civil war with the south/west. Sudan remains a country on the State Department's state terrorist list, and one with a known history of hostage taking and human rights abuses of wide magnitude and scope.

As for security concerns associated with the presence of Applicant's extended family members in Sudan, the potential heightened risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant through both his own family members and his wife's wife's siblings still residing in Sudan is considerable, Applicant's disclaimers notwithstanding. Based on his case-specific circumstances, MC 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign a foreign individual, group, organization, or government and the interests of the U.S." is not available to Applicant. Neither Applicant nor his wife and their respective family members residing in Sudan can be characterized as sufficiently insulated from potential pressures and influence from Sudan government and military officials to warrant application of this mitigating condition.

Of some benefit to Applicant is MC 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant's demonstrated loyalty, patriotism, and professional commitments to the U.S., while considerable, are not enough to neutralize all potential conflicts that are implicit in his relationships with his spouse, his siblings, and his wife's family members. MC 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation," has some applicability, too, based on Applicant own infrequent contacts with his wife's family members residing in Sudan. Application of MC 8(c) is necessarily limited, though, because of the frequent exchanges applicant and W maintain with their family members residing in Sudan.

Two other mitigating conditions have mixed application to Applicant's situation. MC 8(e), "the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country," has some prospective value based on Applicant's assurances of reporting his travel plans to Sudan, and his long absence from the country (no visits since 1996). But there is really no documented record of Applicant's prior reporting of his contacts with members of his family and his wife's family, respectively, to warrant any more than minimal consideration at this time. The same holds true with respect to MC 8(f), "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual." The extent of Applicant's and W's financial interests and expectancies (e.g., inheritance) in Sudan is for the most part still unknown.

Whole person assessment is not available either to minimize Applicant's exposure to conflict of interests with his Sudan family members. While Applicant is not aware of

any risks of coercion, pressure, or influence that any of his, or his wife's, family members might be exposed to, he acknowledged little information about them, their backgrounds and relationships with former associates. So, in Applicant's case, the potential risk of coercion, pressure, or influence being brought to bear on him, his wife, or any of their respective family members remains uncertain, and therefore potentially considerable.

Overall, any potential security concerns attributable to Applicant's relations with his wife and their respective family members residing in Sudan, are insufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in the Sudan. Unfavorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE):	AGAINST APPLICANT
Sub-para. 1.a :	AGAINST APPLICANT
Sub-para. 1.b:	AGAINST APPLICANT
Sub-para. 1.c:	AGAINST APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	AGAINST APPLICANT

CONCLUSIONS

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

