



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:	)	
	)	
-----	)	
-----	)	ISCR Case No. 07-04881
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 27, 2008

---

**Decision**

---

CURRY, Marc E., Administrative Judge:

On August 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 26, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on December 3, 2007. DOHA issued a notice of hearing on December 21, 2007, and I convened the hearing as scheduled on January 23, 2008. During the hearing, I received three government exhibits, two Applicant exhibits, and Applicant's testimony. Also, at the government's request, I took administrative notice of the facts listed in 10 source documents

concerning the Republic of Sudan. At the conclusion of the hearing, I left the record open at Applicant's request for him to submit additional documents. Within the time allotted, he submitted three additional documents. DOHA received the hearing transcript (Tr.) on February 1, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer, Applicant admitted all of the SOR allegations. He is a single man, originally from Sudan, who is seeking to work for a defense contractor as an Arabic translator. He obtained a translator certification in March 2004 (Exhibit 6).

Applicant was born and raised in a "mudhouse" in a remote village in western Sudan that lacked sewage, electricity, and running water (Tr. 88). Because Sudan is underdeveloped, it has no accurate method of tracking the identity and age of citizens such as Applicant who were born in rural areas. When children begin primary school, the government assigns them an estimated age (Tr. 53). Therefore, Applicant's age, listed as 54, is an approximation.

School attendance in Sudan after primary school is a privilege. Students must earn admission into successive schools. Because Applicant's province had few schools, the admissions process was highly competitive. Applicant, a stellar student, was accepted into intermediate school, high school, and college (Tr. 92). In 1978, after earning a bachelor of laws at the state university, he began working as a high school teacher in Sudan. He then worked for the Sudanese judiciary as an associate judge/assistant legal advisor in 1979.

Later in 1979, Applicant emigrated to Yemen, and began working as an elementary school teacher. Then, he moved to Saudi Arabia where he worked as a translator and legal assistant for a law firm. He then moved to the United Arab Emirates (UAE). and worked as a court commissioner and an investigator (Tr. 62).

In 1981, Applicant emigrated to the United States to attend graduate school. He retained no connections with anyone from Saudi Arabia, Yemen, or UAE after leaving these countries. By 1986, he had earned a master's degree and a doctorate in public administration (Tr. 93).

He has published several articles on subjects in his field. Also, he is a member of the American Society of Public Administration (Exhibit 3 at 4).

In 1987, Applicant began working as a chaplain for a state prison system. He primarily focused on counseling Muslim inmates. Also, he managed the prison's budget for religious items (Exhibit 3 at 2), served as a liaison for chaplains of any denomination who worked at the prison (Tr. 97), and taught courses to prisoners. He has also served over the years as an adjunct professor at a local university (Tr. 100).

Applicant became a naturalized U.S. citizen in 1996 (Exhibit 3 at 1, Tr. 54). He retired from the prison system on disability in 2000, and receives a state pension (Exhibit 1 at 10, Tr. 97).

Applicant's mother, brother, and three sisters are citizens and residents of Sudan. His father is deceased. They live in rural, adjoining villages in western Sudan (Tr. 55). None of their homes has electricity, sewage, telephones, or running water (Tr. 88). He talks to his mother once every three to six months (Tr. 76), and sends her \$1,000 per year (Answer at 3, Tr. 66). She is elderly and in poor health. Until her health deteriorated, she was a subsistence farmer (Tr. 69). He last visited her in 2005 when her medical condition required hospitalization (Tr. 65).

Applicant's brother is an accounting clerk for a Sudanese government agency (Tr. 71). They have not seen one another since 1992. Applicant last talked to him in 2005 when he returned home to visit (Tr. 78).

Applicant's oldest sister is a homemaker. He last saw her during his 2005 visit. On average, he talks to her approximately once per year (Tr. 80). Most recently, he called her six months ago to offer condolences after her husband was ambushed and murdered by a rival ethnic group (Tr. 80).

Applicant's next oldest sister is a subsistence farmer, and his youngest sister is a primary school teacher. He visited them during his 2005 Sudan visit. He has spoken with them once since then (Tr. 81).

Communication between Applicant and his family is difficult. None have land phone lines, and although many of his relatives now own cell phones, they are unreliable in Sudan (Tr. 73). Most often when he talks to them, they have to travel from their village to a general store to call him, or he must leave a message with the store proprietor who will tell them to return his call (Tr. 89). Applicant wires the money he sends to his mother through the community general store, also.

Applicant's stepmother, two half-brothers, and six half-sisters are also Sudanese citizens and residents. They live in a more modern town than his full siblings and his mother (Tr. 83). His stepmother is elderly and does not work. He talks to her approximately once every three to six months. One of the half-brothers and two of the half-sisters are primary school teachers (Tr. 72). Three half-sisters are homemakers, and the remaining half-siblings are recent college graduates (Tr. 74, 85). Since visiting Sudan in 2005, he has spoken to them once when, on his half-brother's wedding day, he called to offer congratulations (Tr. 85).

Applicant traveled to Sudan to visit relatives in 1983, 1992, 1997, and 2005. (Tr. 68). These four visits and the sporadic phone conversations constitute the only forms of communication in which Applicant has engaged his relatives since leaving in 1981. None of his relatives have visited him in the U.S., and he has no assets in Sudan (Exhibit 2 at 6, 15).

Sudan is a poor country with a population of 40 million people. Its transportation infrastructure extends to only one tenth of one percent of the country (Exhibit I at 1, 7), and its foreign debt exceeds its gross domestic product (Exhibit I at 8). Most rural towns, streets, and buildings do not carry names, numbers, addresses or signs (Exhibit 2 at 15).

The central government is located in northern Sudan. It is a repressive regime which brutally restricts civil liberties, frequently harassing minority ethnic groups, conducting surveillance in schools, universities, markets, workplaces, and neighborhoods, and monitoring e-mail. Examples of human rights violations include torture, prolonged pre-trial detention, executive interference with the judiciary, and forced labor (Exhibit V at 1).

Sudan's northern and southern regions fought a civil war for nearly 30 years (Exhibit I at 3, 4). In 2003, with international help, they negotiated a peace agreement. Several militias from both sides of the conflict have refused to acknowledge it (Exhibit I at 6). They have continued to randomly brutalize civilians and harass their former opponents (Exhibit V at 11).

At or about the time northern and southern Sudan were negotiating a peace agreement, conflict arose between minority tribal groups and government-backed militias in Darfur, a province in western Sudan (Exhibit I at 5). With the central government's support, the militias murdered thousands of minority tribe members, and displaced more than two million others (Exhibit V at 1).

Sudan's borders are porous. Sudanese citizens have been subjected to random attacks from border-crossing rebel groups and bandits from adjacent countries (Exhibit II at 2).

Historically, terrorists have operated in Sudan with impunity. This compelled the U.S. in 1993 to designate Sudan a state sponsor of terrorism (Exhibit VII at 2). In 1997, President Clinton, citing Sudan's "continued support for international terrorism, ongoing efforts to destabilize neighboring governments, and the prevalence of human rights violations," declared Sudan to be an extraordinary threat to the national security and foreign policy of the U.S., and signed Executive Order 13067 imposing sanctions (Exhibit IX).

Since 9/11, Sudan has taken significant steps to cooperate in the War on Terror, aggressively pursuing threats to U.S. interests (Exhibit VII at 1, 2). The threat of indiscriminate terrorist attacks on U.S. interests in Sudan remains (Exhibit III). Because of the Sudanese government's continuing violation of human rights, "particularly with respect to the conflict in Darfur, where the Government of Sudan exercises administrative and legal authority and pervasive practical influence . . . .," President Bush extended U.S. sanctions in 2006 (Exhibit X at 1).

## **Policies**

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2©, the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline B, Foreign Influence**

Under this guideline, "foreign contacts and interests may be a security concern if an 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 interests" (AG ¶

6). Here, Applicant worked in Yemen, Saudi Arabia and the UAE nearly 30 years ago before emigrating to the U.S. He retains no contacts with anyone from these countries. His prior residence in those countries does not create a foreign influence security concern.

Conversely, Sudan is a brutally repressive country that is a haven for warlords, militias, bandits, and terrorists. The presence of Applicant's relatives there, and his contacts with them generates a security concern under AG ¶ 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 risk of foreign exploitation, inducement, manipulation, or coercion."

Applicant last talked to his brother when he visited Sudan in 2005. Before that visit, he had not seen him since 1992. He has only spoken to his other siblings and half-siblings once since the 2005 visit, and does not correspond with them in any other manner. AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," applies to these relatives.

Applicant sends his mother money and talks to her and his stepmother approximately once every three to six months. AG ¶ 8(c) does not apply to these relationships.

Applicant has lived in the U.S. for 27 years, more than half his adult life. In that time, he has earned a Ph.D, published scholarly works, and periodically taught college students. He currently receives a pension from a state civil service job where he worked for 13 years before retiring. He has no assets in Sudan, and has only visited four times since emigrating to the U.S. AG ¶ 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," applies.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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 individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security

clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Sudan is a repressive, underdeveloped country controlled by an autocratic government that is either unable or unwilling to project its authority throughout its geographic boundaries. It has an extremely limited communications and transportation infrastructure, particularly in rural areas.

Applicant's relatives live in remote, rural areas far from the government's nexus of power. Many of them live in homes located on unnamed streets without electricity, phone service, or running water. Although the Sudanese government has little respect for the individual rights of its citizens, the possibility that it will identify and target Applicant's relatives in order to exploit them is limited by the lack of infrastructure necessary to do so.

Many of the areas where the Sudanese government's power is weakest are controlled by ethnic strongmen, bandits, terrorists, and militias, all of whom have brutalized civilians in the past. Because of the volatile nature of these groups, the Sudanese hinterlands are in a state of nearly constant armed conflict. Under these circumstances, Applicant's relatives are more likely to be killed indiscriminately than used against him as tools of coercion. Upon evaluating this case in the context of the whole person concept, I conclude Applicant's longstanding relationships and loyalties in the U.S. developed throughout the 27 years since he emigrated here outweigh the risk of coercion posed by his relatives living in Sudan. Clearance is granted.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a - 1.j:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

MARC E. CURRY  
Administrative Judge