



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 07-11590
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esq., Department Counsel
For Applicant: *Pro se*

July 31, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Foreign Influence. Clearance is granted.

History of Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on April 4, 2006. On October 17, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) for Applicant. 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 acknowledged receipt of the SOR on October 25, 2007. He answered the SOR on the same day, and requested a hearing before an Administrative Judge. DOHA received the request on October 29, 2007. Department Counsel was ready to proceed on November 28, 2007. The case was assigned to me on December 3, 2007. On December 14, 2007, I submitted a request to the hearing office requesting the case be scheduled on January 23, 2008. On December 21, 2007, DOHA issued a notice of hearing scheduling the case to be heard on January 23, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on January 29, 2008. I held the record open until January 30, 2008 to afford the Applicant the opportunity to submit additional material. The Applicant timely submitted Applicant Exhibits (AE) A through I, which were received without objection.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Sudan and the United Arab Emirates (UAE) contained in Exs. I(A) through XV. Applicant objected to my consideration to the documents pertaining to Sudan and the UAE on the grounds of relevance. I overruled Applicant's objection and took administrative notice of the documents offered by Department Counsel. Tr. 12-15, 17.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)).

The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Sudan and the UAE were derived from Exs. I(A) through X as indicated under subheading "Sudan" and "United Arab Emirates" of this decision.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations in the SOR, except SOR ¶ 1.b., which he denied. After a review of the evidence, I make the following findings of fact.

Applicant is a 45-year-old Arabic linguist, who has been employed by a defense contractor since November 2005. He is a first-time applicant for a security clearance and seeks a clearance to enhance his position within his company. GE 2, Tr. 40-41, 58. He was awarded an associate's degree in business administration in January 1995, and was awarded a bachelor of science degree in business administration in December 2006. Tr. 35-37.

Applicant was born in 1963 in the U.S. to Sudanese parents. As such, he is a U.S. citizen by birth. GE 2. During this timeframe, his father was attending graduate school and also taught at the university level. Tr. 16, 40. Applicant's father was a career employee with the United Nations, and was posted to or lived in a number of countries to include Kuwait, Japan, Sudan, Morocco, and Ethiopia. Applicant and his family typically accompanied his father to these various postings. Tr. 39-40, 45. Applicant returned to live in the U.S. in the summer of 1983. Tr. 45. Since returning to the U.S. in 1983, he has lived continuously in the U.S. except for periods of time he lived in Sudan and the UAE discussed *infra*. Tr. 45.

Applicant married his wife in Sudan in December 1986. At the time they married, Applicant's wife was a Sudanese citizen. She immigrated to the U.S. in 1987 and became a naturalized U.S. citizen in February 1995. She is also an Arabic linguist employed by the same company as the Applicant. Tr. 42-43. Applicant and his wife have two U.S. born sons, ages 19 and 16. Tr. 48-49, GE 2.

Applicant has three siblings, a 46-year-old sister, a 44-year-old sister, and a 35-year-old sister. His two oldest sisters were born in the U.S., and like Applicant are U.S. citizens by birth. They have resided continuously in the U.S. since 1997. His youngest sister was born in Kuwait, is a citizen of Sudan, and formerly resided in the UAE. She recently immigrated to the U.S. in November 2007 and holds permanent resident alien status. (SOR ¶ 1.e.) Tr. 17, 50-54.

Applicant's parents are divorced. His mother is a naturalized U.S. citizen, has lived in the U.S. since 1997, and has lived with Applicant and his family since 2000. She is employed as a teacher's assistant. Tr. 17-18, 20, GE 3. She does not communicate with any relatives in Sudan. Tr. 21. Applicant's father is a resident and citizen of Sudan. (SOR ¶ 1.a.) He retired from the United Nations (SOR ¶ 1.b.), has remarried, and has children by his second wife. Applicant has not communicated with his father since "2005 or 2004" and stated "[m]y relationship with him isn't that perfect." Tr. 17. Applicant's father does not communicate with Applicant or his family. Applicant's described his father as a "recluse." Tr. 48.

Applicant's mother-in-law is a citizen of Egypt and resident of Sudan. She lived with Applicant and his family from 2001 to 2006 in the U.S. (SOR ¶ 1.c.) Tr. 27. She returned to Sudan in 2006 and lives with her daughter, who is a stepsister to Applicant's wife. Tr. 29. Applicant's mother-in-law is 79 years old and is diagnosed with several medical problems to include cancer, diabetes, near blindness in one eye, high blood pressure, and high cholesterol. AE A. He described his relationship with his mother-in-

law as “normal.” His wife communicates with her mother by telephone “every maybe two, three months, maybe around that range.” Tr. 27. Applicant’s wife sends her mother \$300 to \$500 every month. Tr. 29. Applicant’s stated his mother-in-law was married “five or six times” and “was a housewife basically.” Tr. 30. Applicant’s father-in-law is a citizen and resident of Sudan. (SOR ¶ 1.d.) Applicant’s last spoke to his father-in-law in 1986. Tr. 18. Applicant’s wife is an illegitimate child and his father-in-law “never did agree to be her father.” Tr. 26, GE 3. Applicant described the relationship with his father-in-law as, “[t]here is no relationship.” Tr. 26.

Applicant’s stepmother is his father’s second wife. She like his father is a citizen and resident of Sudan. (SOR ¶ 1.f.) Applicant met his stepmother in “1996 or 1995.” He stated, “I don’t even know her last name. All I know is my father remarried a woman who is younger than my younger sister, so that’s all I know.” Tr. 18. Applicant stated he has no relationship with his stepmother, adding “she’s my father’s wife, not my stepmom.” Tr. 31, 56. He stated, “But my relationship with my father has been complicated for years. So that’s – I mean he’s married to a younger woman. That’s irrelevant, period. But my relationship with my father, I mean we didn’t – before I spoke to him in 2004 or 2005, I probably hadn’t spoken to him from ’88 until that time probably.” Tr. 24-25, 55. Applicant does not have his father’s telephone number nor does he have a way of maintaining contact with him. Tr. 25-26.

Applicant’s former stepfather is a citizen and resident of Sudan. (SOR ¶ 1.g.) He stated the last time he spoke to his former stepfather was in “1995 or 1996. One of those years.” Tr. 32. He and his mother divorced “sometime probably in ’88 or ’89.” Tr. 32. Applicant has no idea what his former stepfather does for a living and has no contact with him. Tr. 32, 54-55.

Applicant resided in Sudan from October 1995 to August 1996. (SOR ¶ 1.i.) Applicant described this time as a “vacation” where he spent time with his mother and sisters, who were residing there at the time. Tr. 22-23. In 1997, Applicant’s mother and two older sisters moved to the U.S. where they have remained. Tr. 23. From September 1996 to February 2000, Applicant resided in the United Arab Emirates. (SOR ¶ 1.h.) During that time, Applicant was a sales manager for a private company that dealt in school furniture, and school-related supplies. Tr. 32-33. Applicant returned to the U.S. in February 2000, and has remained in the U.S. since that time.

The Assistant Vice President Language Services (AVP) from Applicant’s company testified on his behalf. The AVP retired from the U.S. Army as a Lieutenant Colonel after serving 28 years of active duty. He holds a top secret clearance sensitive compartmented information (TS/SCI) with several high level U.S. government intelligence agencies. He has been working for his current employer since he retired from the Army, approximately five years ago. Tr. 57, 61-62.

The AVP is Applicant’s direct supervisor and has observed him on a daily basis for the past two years. Tr. 58-60. As a defense contractor employee, Applicant provides support to a government agency and was selected for his particular assignment

because of his background knowledge of the Middle East, and specifically to provide analysis of Sudan and Egypt and related areas. Applicant supervises six other linguists and the AVP considers him “totally trustworthy, honest to a fault.” Tr. 60. The AVP also supervises Applicant’s wife and knows them both in a professional capacity. The AVP stated their company initially screens employees by performing credit and criminal background checks, leaving security clearance background checks to the respective government agencies. Tr. 61, 64. The AVP is very well versed on security and the security clearance process and provided the following testimony in response to Department Counsel’s question, “Do you have any concerns with [regard to Applicant having family members in Sudan]” Tr. 63.

No, I don’t. . . . [I]n my section we have about 90 linguists and language analysts who work for us. And of the 90, probably 75 or 80 of them are native born linguists. So, no, the fact that they have – that people have family overseas is not really an issue. . . . [of greater] concern is either property ownership overseas or a close relationship like for instance if [Applicant] supported his family overseas, which he doesn’t. Or frequent travel overseas – that would be more of an issue. But just the fact that a person is from overseas having [a] security clearance is not an issue. Tr. 63.

The AVP added:

I wish I had 89 [Applicants], honestly. He’s a self-starter. When he’s given a project to conduct analysis on, he does it to excruciating detail. When he first started – like he’s on kind of the second phase of the projects that he’s worked for us on. When he started on the first project the government didn’t exactly know what they were looking for. They knew what they didn’t want but they really didn’t know what they wanted. And that was kind of the guidance that [Applicant] was given. We don’t know what we want but we’ll know when we see it, so keep doing the analysis you’re doing. And he never gave up and he never – a lot of people would get a real bad attitude for something like that. You know not given strict guidance. . . . But he didn’t. He didn’t give up at all. And he kept refining his searches and he kept refining his research techniques and then he discovered exactly the product that the government wanted. He has delivered some really premier products to this particular customer – to [government agency] – that have provided great – that have been of great import to the United States intelligence community. Tr. 68.

After September 11th, the government – the intelligence community as a whole, and I was a military attaché in [Middle Eastern country] when September 11th happened – the intelligence community outside of military linguists or attaches like myself didn’t understand that there’s a difference in a linguist and a speaker. And the United States government went out and hired taxi drivers and butchers – people working butcher stores – and

candlestick makers, trying to make them linguists. But just because you speak another language does not make you a linguist. So the demand for an Arabic speaker or the – Arabic speakers honestly are a dime a dozen – but good Arabic linguists who can accurately take the Arabic and all the syntax and all the hidden Koranic meaning – not hidden but difficult to understand Koranic meaning is very – they’re becoming more and more scarce because a lot of them have been hired by the government, honestly. . . . I’ve had, in the five years, four and a half years I’ve been there, I’ve probably had ten native Arabic linguists hired by the government from our contracts. Tr. 70-71.

The AVP concluded stating that Applicant was recently selected as employee of the quarter out of 600 defense sector employees. Tr.72. On the basis of his past two-year relationship with Applicant, the AVP has no concerns about granting a security clearance to Applicant. Tr. 64, 77.

Applicant’s employee performance evaluations reflect the highest possible marks with supporting write-ups. AE B through D. Applicant submitted a reference letter authored by a senior U.S. government official/client that stated in part,

[We] would like to take this opportunity to express our great appreciation at the end of an extremely productive contract year with our organization. Your consistent, accurate, and timely responses to our requests and those of our customers has helped make our organization the leading responder to breaking developments in Sudan. Your skill in monitoring, processing, and providing feedback in a timely manner with extraordinary flexibility is most appreciated. Your reports and translations from the Jihadists websites garner our customers’ attention on a regular basis with high impact. Your accurate, professional and timely offerings of opinions on political, military, and CT issues in the Horn of African and in particular on Sudan is invaluable. AE E.

Applicant and his wife exercise all rights and privileges of U.S. citizenship to include voting regularly. They are involved in their children’s activities. Tr. 79-80. He has been a home owner since 2002. Tr. 33. He estimates his net worth to include his 401k, home equity, and bank accounts to be \$420,425. Tr. 34, AE A. Applicant also submitted two other awards to include Employee of the Quarter, 2nd Quarter of CY 2005, a Leadership Excellence Award, and two honorary society certificates. AE F through I.

Sudan¹

In February 1953, the United Kingdom and Egypt concluded an agreement that provided for Sudanese self-government, with a transitional period toward independence. Sudan achieved independence on January 1, 1956 under a provisional constitution. A

¹ The contents of the information contained in subheadings “Sudan” and “United Arab Emirates” were taken in whole or in part from Exs. I(A) through XV.

mutiny of army officers led to seventeen years of civil war (1955-1972). A peace agreement was reached in 1972, but civil war began again in January 1983 when soldiers mutinied. Through the 1990s, there were a series of regional efforts to bring the Sudanese civil war to an end. By mid-2001, prospects for peace in Sudan appeared to be remote. On January 9, 2005, a Comprehensive Peace Agreement was signed, establishing a new Government of National Unity and the interim Government of Southern Sudan, and stipulating a six-year interim period to allow for implementation of the Comprehensive Peace Agreement and elections at all levels. Although some progress was achieved, meaningful implementation of key provisions of the Comprehensive Peace Agreement has faltered.

A rebellion in Darfur has resulted in the deaths of tens of thousands of persons in Darfur, and has led to an estimated 2 million internally displaced persons in Sudan and 234,000 refugees in neighboring Chad. The Sudanese Government “is complicit in the bombing, murder, and rape of innocent civilians” in Darfur, and the Sudanese President has demonstrated a “continued refusal to honor his commitments to end the violence in Darfur.”

In August 1993, Sudan was designated by the Secretary of State as a state sponsor of terrorism. Although Sudan has “aggressively pursued terrorist operations directly involving threats to U.S. interests and personnel in Sudan,” it remains on the State Department list of State Sponsors of Terrorism.

Sudan is under a broad U.S. embargo, with extensive trade restrictions on exports and re-exports to Sudan. In 1997, President Clinton issued Executive Order 13067, which declared that the policies and actions of the Government of Sudan “constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.” In 2006, President Bush issued Executive Order 13412, which cited “the continuation of the threat to the national security and foreign policy of the United States created by certain policies and actions of the Government of Sudan” and reaffirmed and supplemented Executive Order 13067.

The Government of Sudan’s human rights record has “remained poor, and there were numerous serious problems,” including: continuing genocide in Darfur; extrajudicial and other unlawful killings; torture, beatings, rape, and other cruel and inhumane treatment by security forces; arbitrary arrest and detention; executive interference with the judiciary and denial of due process; infringement of citizens’ rights to privacy; infringement of the freedoms of speech, press, assembly, association, religion, and movement; trafficking in persons; violence and discrimination against women and ethnic minorities; and forced labor. Although prohibited by the Interim National Constitution, government security forces “continued to torture, beat, and harass political opponents and others.” Even though it is prohibited by the Interim National Constitution and law, “the government continued to arbitrarily arrest and detain under the National Security Act.” Furthermore, “[a]lthough the law provides for access to a lawyer, security forces often held persons, including criminal detainees, incommunicado for long periods in unknown locations without access to their lawyers or

family members.” The government monitors Internet communications and the National Intelligence and Security Service (NISS) reads email messages between private citizens.

The U.S. Department of State “continues to warn U.S. citizens against all travel to Sudan.” The travel warning states: “Travelers are reminded that the U.S. Government has received indications of terrorist threats aimed at American and western interests in Sudan. Terrorist actions may include suicide operations, bombings, or kidnappings.”

United Arab Emirates

The United Arab Emirates (UAE), located in the Persian Gulf region, is a federation of emirates, each with its own ruler. The federal government is a constitutional republic, headed by a president and council of ministers. Islamic ideals and beliefs provide the conservative foundation of the country’s customs, laws and practices. Only 15-20% of the UAE’s population are UAE citizens. The remaining population includes significant numbers of other Arabs, including many Iranians.

The UAE contributes to the continued security of the Persian Gulf, and is a leading partner in the campaign against terrorism, providing military, diplomatic and financial assistance. The United States has enjoyed friendly relations with the UAE since their formation in 1971, and particularly since the 1990-91 Gulf War. However, two of the 9/11 hijackers were UAE nationals and the UAE was one of only three countries to recognize the Taliban as the legitimate government of Afghanistan. Dubai is also a key transfer point for illicit sales of nuclear technology to Iran, Libya, and North Korea.

Traditional rule in the UAE is generally patriarchal, with political allegiance defined in terms of loyalty to tribal leaders. There are no democratically elected legislative institutions or political parties, and no general elections. In 2006, the U.S. State Department found that the UAE government’s respect for human rights remained “problematic,” due to its lack of elections, arbitrary and incommunicado detentions, questionable independence of the judiciary, and restrictions on civil liberties.

Policies

In an evaluation of an applicant’s security or trustworthiness suitability, an administrative judge must consider the “Adjudicative Guidelines for Determining Eligibility For Access to Classified Information” (AG(s)). The AGs include brief introductory explanations for each AG, and provide specific disqualifying conditions and mitigating conditions.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common

sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept,” an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at AGs ¶ 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.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security.” AG ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts by “substantial evidence,”² demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).³

² “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

A person seeking access to classified or sensitive 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. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly

Guideline B (Foreign Influence)

AG ¶ 6 explains the Government's concern about "foreign contacts and interests" stating:

If the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case, including:

(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;

(b) connections 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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk or foreign inducement, manipulation, pressure, or coercion.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). At a minimum, Applicant has vicarious contact with his mother-in-law, vis-à-vis his wife, who lives in Sudan. His mother-in-law lived with him and his family in the U.S. for five years from 2001 to 2006. Applicant's wife maintains direct and frequent contact with her mother by telephone and sends her \$300 to \$500 a month. Applicant described his relationship with his mother-in-law as "normal."

Applicant's evidence supports the notion he has no meaningful relationship with his father, father-in-law, stepmother, and former stepfather, who all are citizens and residents of Sudan. Since the SOR was issued, Applicant's sister, who was living in the UAE, moved to the U.S. in 2007 as a permanent resident alien. Applicant also resided in Sudan for 11 months from October 1995 to August 1996, and resided in the UAE for 3 ½ years from September 1996 to February 2000. Considering the facts as a whole, the relationship Applicant has with his mother-in-law and his foreign travel create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

The Government produced substantial evidence of these three disqualifying conditions as it pertains to Applicant's relationship with his mother-in-law and his foreign travel. However, the government's evidence did not establish that Applicant had similar relationships or connections his father and relatives through marriage. The burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Two Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those 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

individual, group, organization, or government and the interests of the U.S.; and

(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.

The government's evidence established disqualifying conditions as it pertains to his mother-in-law, and the following discussion is limited to her. AG ¶ 8(a) partially applies. Applicant's mother-in-law is not associated with or connected with the Sudanese government. His mother-in-law is elderly and in poor health. Applicant does enjoy a "normal" relationship with his mother-in-law, which is reasonable given the fact she lived with him and his family for five years in the U.S. His wife enjoys a continuing and close relationship with her mother as evidenced by her frequent telephone calls and monthly monetary support.

Applicant has no relationship with his father and former relatives by marriage. In the case of his mother-in-law, Applicant did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his mother-in-law] and the interests of the U.S." His relationship with his mother-in-law vis-à-vis his wife could *potentially* force him to choose or place him in a position to choose between the United States and Sudan. On balance, he did not fully meet his burden of showing there is "little likelihood that [his relationship with his mother-in-law] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. Except for the times Applicant resided in the UAE and Sudan, Applicant has lived in the U.S. since 1983, a period of 25 years. Although he is somewhat close to his mother-in-law, he has a much greater relationship with his family living in the U.S. His wife has lived in the U.S. since 1987, a period of 21 years. She became a naturalized U.S. citizen in 1995. Both of Applicant's sons, ages 19 and 16, are U.S. born citizens. He is completely vested in the U.S. His two sisters are U.S. born citizens and live in the U.S. His mother is a naturalized U.S. citizen and lives with the Applicant. His remaining sister recently immigrated to the U.S. in 2007 and is a permanent resident alien.

The only immediate family member Applicant has in Sudan is his estranged father. Applicant has developed a sufficient relationship and loyalty to the U.S., as he can be expected to resolve any conflict of interest in favor of the U.S. interest. Applicant has been employed by his defense contractor employer since November 2005, and is very highly regarded at work. Applicant's contacts and linkage to the U.S. are much greater than his linkage to Sudan or the UAE. He is heavily vested in the U.S., financially and emotionally.

“Whole Person” Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. “Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant’s life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant’s security eligibility by considering the totality of an applicant’s conduct and circumstances.”⁴ The directive lists nine adjudicative process factors (APF) which are used for “whole person” analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, “the potential for pressure, coercion, exploitation, or duress,” Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.⁵ In addition to the eighth APF, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I have carefully considered Applicant’s family connections and personal connections to Sudan and the UAE. Applicant was raised, in part, in Sudan, and has various immediate and non-immediate family members who are from Sudan. He spent approximately 11 months on vacation in Sudan from 1995 to 1996. He worked and resided in the UAE for 3 ½ years from 1996 to 2000. His sister, who recently immigrated to the U.S. is a Sudanese citizen. His wife has frequent, non-casual contact with her elderly and ailing mother, who lives in Sudan.

Substantial mitigating evidence weighs towards grant of Applicant’s security clearance. Applicant is a U.S. born citizen. After accompanying his father and family to various countries, he chose to return to the U.S. in 1983, attend college, and take up permanent residence. Except for his visit to Sudan and time spent in the UAE, he has

⁴ ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

⁵ See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

remained continuously in the U.S. After his Sudanese wife moved to the U.S. in 1987, she chose to become a U.S. citizen, which she successfully attained in 1995. Applicant has strong ties to the U.S. He and his wife have two U.S. born children. His mother is a naturalized U.S. citizen and lives with him and his family. Applicant has two U.S. born sisters, who reside in the U.S. and a third sister who was born in Sudan, who recently immigrated to the U.S. Apart from his father, Applicant has no immediate family members living in any other country other than the U.S.

Applicant has no meaningful relationship with his father, who lives in Sudan. He does not communicate with him. He has no relationship with the other non-immediate relatives in Sudan identified in the SOR. His father has remarried and started a new family apart from Applicant and his siblings. His mother-in-law is elderly and in poor health. None of his immediate or non-immediate family members overseas are in positions placing them as likely targets as a means to exploit Applicant. He has no financial ties overseas in contrast to his U.S. financial ties. There is no evidence he has ever taken any action which could cause potential harm to the United States.

Applicant is a very successful Arabic linguist. His employer's confidence and trust in him is very high. Weighing very heavy in Applicant's favor was the credible and persuasive testimony provided by his AVP. His AVP has extensive training and experience in security clearance matters, and has first-hand knowledge of Applicant's professional capabilities. The AVP provided evidence of Applicant's contribution, which "have been of great import to the United States intelligence community." The government agency client drafted a letter stating that Applicant's work product "helped make our organization the leading responder to breaking developments in Sudan."⁶ The AVP assesses Applicant as loyal, trustworthy, conscientious, responsible, mature, and of high integrity. Based on the overall facts taking into account the contribution he has made and will continue to make as an Arabic linguist, the AVP strongly recommended him for a security clearance. The government did not produce any derogatory information about him nor did anyone come forward recommending denial of his security clearance.

Although the Government has no obligation to present evidence that Applicant and/or his family members are foreign agents, Applicant's family members are not, and never have been, foreign agents. Sudan is not without its difficulties. The one relative Applicant is close to in Sudan is his mother-in-law, who is elderly with numerous health problems. No evidence was presented suggesting the Sudanese government has used its resident citizens to extract information from U.S. relatives. The likelihood of such an occurrence appears remote. Applicant has no connection with the UAE since his sister, who was living there, immigrated to the U.S. last year.

This case must be adjudged on his own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This Analysis must answer the question whether there is a legitimate concern

⁶ See ISCR Case 07-00034 (App. Bd. Feb. 5, 2007.) (emphasizing contribution Applicant has made in the War on Terrorism).

under the facts presented that the Sudanese and UAE governments or its agents might exploit or attempt to exploit Applicant's immediate family members in such a way that this U.S. citizen would have to choose between his pledged loyalty to the U.S. and those family members.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁷ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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.i.:	For 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 is granted.

Robert J. Tuider
Administrative Judge

⁷See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).