



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



In the matter of:)
)
) ISCR Case No. 07-16606
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Department Counsel
For Applicant: James D. McFarland, Esquire

July 16, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant is a Sudan born, naturalized U.S. citizen, who has lived in the United States since August 2000. His parents, oldest son, and siblings are citizens and residents of Sudan. Applicant has substantially more connections to the United States than to Sudan. After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has rebutted or mitigated the government’s security concerns under guideline B, foreign influence. Eligibility for access to classified information is granted.

Statement of Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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

Applicant a Statement of Reasons (SOR) on February 13, 2008, detailing security concerns under Foreign Influence.

On March 4, 2008, Applicant answered the SOR, and requested a hearing before an administrative judge. On March 28, 2008, I was assigned the case. On April 14, 2008, DOHA issued a notice of hearing scheduling the hearing held on April 22, 2008. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through H, which were admitted into evidence. On May 9, 2008, the transcript (Tr.) was received.

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. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEx) 1–10. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with explanation, the factual allegations of the SOR.

Applicant is a 39-year-old interpreter who has worked for a defense contractor since October 2006, and is seeking to obtain a security clearance. Applicant served in combat as an interpreter with the U.S. Army in Iraq. He is intelligent, unflappable, dependable, reliable, loyal, confident, competent, and possessing impeccable oral and written communicative skills. Applicant puts into practice the U.S. Army's values of loyalty, duty, respect, selfless service, honor, integrity and personal courage. (Ex. A) Applicant's Certificate of Appreciation is signed by a U.S. Army colonel. (Ex. B) His duty performance rated him as high as possible stating he exceeded expectations, his work was exceptional, his job knowledge superior, his dependability exceptional, and his judgment outstanding. (Ex. C) His overall duty performance was outstanding and his impact with the U.S. military remarkable.

Applicant was born and grew up in Southern Sudan in a Roman Catholic family. (Tr. 39) His father, a retired primary school teacher, and mother, a housewife, are citizens and residents of Sudan. Applicant's father was trained by the British before Sudan became independent. (Tr. 39) Applicant last saw his parents in 1987 and has telephone contact with them every six months. (Answer to SOR, Ex 2, Tr. 121) His father has tuberculosis and Applicant sent him \$200 per month for a total of \$1,300 to cover the cost of food, medical treatment, and medicine. In Sudan, a person is expected to bring their bed and mattress for any hospital stay. Tuberculosis patients routinely

guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

under go six-month treatments. Applicant was serving in Iraq when he learned of his father's illness. (Tr. 85)

Southern Sudan is made up of ten providences. (Tr. 37) In 1969, the first civil war between North and South Sudan started. It ended with a 1972 peace agreement. (Tr. 39) In 1982, a new civil war started. The people of the South are targeted and terrorized by Northern Central government forces. Life in the South is very difficult. (Tr. 40) A 2005 peace agreement stated Southern Sudan is to be independent until 2011. (Tr. 77) In 1987, Applicant was in his first year of high school when there was an attempt on his life. People were shooting into his house and he had to flee to a church. Applicant has also been beaten several times by government security forces. (Tr. 38, 42)

Applicant spent six months hiding in the jungle before walking to Khartoum and into a UN displaced persons camp. (Tr. 83) At university in Khartoum, Applicant studied Arabic/English translation. He first began studying Arabic at age seven. (Tr. 106) Applicant speaks English, Dinka, Gbaya, and Arabic. (Tr. 159) In 1997, after graduating from the university, Applicant decided to leave Sudan. (Tr. 40)

It was in 1987 that Applicant last saw his family except for his half-brother who lives in the U.S. (Tr. 84) Applicant's oldest son is 12 years old and is a citizen and resident in Sudan. His son is a full time student who Applicant has not had contact with since his son was two. (Tr. 128) Applicant hopes to bring his son to the U.S. His son currently lives with Applicant's sister who lives with Applicant's parents. (Tr. 89) His son's mother died and his son was placed in an orphanage before he went to live with Applicant's sister. (Tr. 123)

Applicant has four brothers, two sisters, a half-brother,² and three half-sisters who are citizens and residents of Sudan. He has little contact with them. Three of his brothers are students and one is a high school teacher. (Tr. 134) Applicant's one sister is a business owner trading in peanuts and the other is a firefighter. (Tr. 137) Applicant has a half-brother who is a major serving as a medic in the Sudanese Army of the South. Applicant last talked to this half-brother when Applicant called his father and his half-brother happened to be there. Applicant had not spoken to this half-brother for years before that call. Applicant's half-sisters are a teacher, a housewife, and one is unemployed. (Tr. 135, 138) Applicant has a half-brother who is a production line worker, is a citizen of Sudan, and resides in the U.S. Applicant has nothing to do with this half-brother, who will become a U.S. citizen after completing the five year requirement to live in the U.S.

In September 1997, Applicant fled from Sudan and went to Syria where he was employed in housekeeping duties and washing dishes in a restaurant. (Tr. 45) In November 1998, he left Syria because of its hostility towards the U.S. and went to Egypt. While in Egypt, he worked as a custodian for a Canadian oil company. (Ex. 2, Ex. D, Tr. 46-49) In Egypt, Applicant met and married his wife, having known her from

² Under Sudanese law, a man is allowed to have two wives. (Tr. 145) His father's first wife was Applicant's mother.

southern Sudan. (Tr. 50) She went to Egypt with her three children. Her husband had been killed in Sudan by the Sudanese government. (Tr. 52) Two or three of his wife's siblings had also been killed in Sudan. (Tr. 139-140)

In August 2000, Applicant travel to the U.S. from Egypt, having been granted refugee status by the U.S. His wife came with him to the U.S. She was pregnant with their first child. He left Egypt on a travel document supplied by the Red Cross, which he used only that one time. (Ex. 2) Upon his arrival in the U.S., Applicant mailed the travel document back to the Red Cross. As a refugee, it was impossible to renew his expired Sudanese passport.

Applicant obtained a job as a machine operator in a printing company. (Tr. 54) He took classes in the U.S. at a community college on ethics and responsibility in translations, writing, and reading English. (Tr. 38) After four months as a machine operator, Catholic Social Services need someone from the Sudan who could speak the language, understand the culture, and was willing to help with the "Lost Boys." (Tr. 55) The "Lost Boys" were homeless children from Southern Sudan whose families were killed by the Sudanese government. (Tr. 56) Applicant was hired and supervised 45 boys and worked with other refugees. Applicant started working at a non-profit organization as a refugee case manager, which continued until October 2006. (Tr. 58) He also worked with a program helping people with mental issues or disabilities. (Tr. 60) In August 2006, Applicant became a naturalized U.S. citizen. (Ex. E)

His supervisor at the non-profit organization worked with Applicant for approximately five years and knew him well. (Tr. 154) While there, Applicant treated everyone equitably and conducted himself in an outstanding professional manner. His supervisor testified that she would trust Applicant with her life and the lives of her children. (Tr. 163)

In October 2006, Applicant went to work for a defense contractor that had a contract with the U.S. Army to provide Arabic speaking linguists. (Tr. 60, 61) In November 2006, he went to Iraq and spent 14 months – from November 2006 to January 2008 – working for the U.S. Army headquarters in Baghdad as a linguist and advisor. (Tr. 66) In January 2008, he returned to the U.S. on leave to see his family. He was not allowed to return to Iraq because he has foreign relatives. If his security clearance is granted, he will return to Iraq to continue serving with the U.S. Army. (Tr. 96) Since returning from Iraq, Applicant called to check on his father, which is the only contact he has had with his foreign relatives. (Tr. 144)

Applicant has had minimum contact with his relatives in Sudan. The majority of contact with his relatives has been through his wife. (Tr. 68) They do not know he worked as a translator in Iraq, but believed he works for an oil company. (Tr. 67)

Applicant's wife, step-daughter, and two step-sons are citizens of Sudan residing with Applicant in the U.S. His wife is a permanent resident who has applied for naturalization and hopes to become a U.S. citizen within the next two months. (Tr. 36) When his wife becomes a U.S. citizen, her children, Applicant's step-children, will also

become U.S. citizens except for the oldest daughter who would no longer be a minor. Applicant has two daughters and a son, ages seven, two, and one, all of whom were born in the U.S. (Ex. 2)

In 2003, Applicant purchased a home with a fair market value of \$124,000 on which he owes \$109,000. (Tr. 64) Applicant has \$2,500 in a U.S. savings account, \$3,500 in his checking account, and \$10,800 in his 401(k) retirement fund. (Tr. 101)

Sudan

I take administrative notice of the following facts. The Northern government in Sudan is hostile to the U.S. The Southern government is not. Sudan had seventeen years of civil war between 1955 and 1972. (HEx. 1, U.S. Department of State, Background Note: Sudan) A peace agreement was signed in 1972 and lasted until January 1983, when civil war started again. In January 2005, a Comprehensive Peace Agreement was signed, establishing a new Government of National Unity and the interim Government of Southern Sudan.

A rebellion in Darfur resulted in the death of tens of thousands of persons and lead to an estimated two million internally displaced persons in Sudan and 234,000 refugees in Chad. (HEx. 1) The Northern Sudanese Government is complicit with the bombing, murder, and rape of innocent civilians in Darfur. (HEx. 1)

In August 1993, Sudan was designated by the Secretary of State as a state sponsor of terrorism. (HEx. 6, State Sponsors of Terrorism) Sudan remains on the list even though it has aggressively pursued terrorist operations directly involving threats to U.S. interest and U.S. personnel in Sudan. (HEx. 7, Country Reports on Terrorism) The U.S. government has received indications of terrorist threats aimed at American and western interests in Sudan to include suicide operations, bombings, or kidnappings. (HEx. 2, U.S. Department of State, Country Specific Information, Sudan)

Sudan is under a U.S. embargo, with extensive trade restrictions on exports to Sudan. (HEx. 8, U.S. Department of State, Overview of Treasury and Commerce Regulations Affecting U.S. Exports to Sudan). The U.S. Department of State warns U.S. citizens against all travel to Sudan. (HEx. 3, U.S. Department of State, Travel Warning, Sudan)

The Government of Sudan's human rights record has remained poor, and there are numerous serious problems including genocide, extrajudicial and unlawful killings, torture, beating, rape, cruel and inhumane treatment by security forces, arbitrary arrest and detention, executive interference with the judiciary, denial of due process, infringement of rights to privacy, freedoms of speech, press, assembly, association, religion, and movement, the trafficking of persons, violence and discrimination against women and ethnic minorities, and forced labor. (HEx. 12, U.S. Department of State, Sudan, Country Reports on Human Rights Practices – 2007) Government security forces continue to torture, beat, and harass political opponents. (HEx. 12) The

government continues to arbitrarily arrest and detain people under the National Security Act. (HEx. 12)

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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), 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." 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.

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 the 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

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. (AG ¶ 6)

Applicant's parents, siblings, and oldest son are citizens and residents of Sudan. His wife and her children are citizens of Sudan, but reside with him in the U.S. His wife is a permanent U.S. resident who hopes to get her U.S. citizenship within the next two months. He also has a half-brother who is a citizen of Sudan living in the U.S. Applicant left Sudan as a refugee first traveling to Syria, then to Egypt before coming to the U.S. In August 2006, he became a naturalized U.S. citizen. In October 2006, he deployed to Iraq for 14 months, working with the U.S. military forces.

Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could possibly raise a security concern are 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 heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion" and AG ¶ 7(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" apply.

The new Iraqi government relies upon the U.S. for support as it moves forward with its new form of government. While Iraq's human rights record under Saddam Hussein was very dismal and some problems continue, its human rights record is slowly improving under the new government.

In every case where parents, children, or siblings live overseas, there is a risk of pressure on these relatives and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation pressure, or coercion is not substantiated. Applicant has significant ties to the U.S. and few ties to Sudan. While his parents and siblings live in Sudan, he lives with his wife, children and step-children in the U.S. He has no financial or property interests in Sudan. His three children were born in the U.S. He owns a home in the U.S. where he maintains his saving account, checking account, and 401(k) retirement plan. Applicant's ties with the U.S. are much stronger than his ties with Sudan.

Applicant worked 14 months as an interpreter supporting the U.S. military mission in Iraq. He worked long hours in austere conditions with an ever present risk of hostile fire. The Army holds his work in high regard. His commander in Iraq stated Applicant is intelligent, unflappable, dependable, reliable, loyal, confident, competent, and possessing impeccable oral and written communicative skills. Applicant puts into practice the U.S. Army's values of loyalty, duty, respect, selfless service, honor, integrity and personal courage. Applicant's duty performance was rate as high as possible. He exceeded expectations, did exceptional work, had superior job knowledge superior, and outstanding judgment outstanding. As his certificate of appreciation states, his diligence and proficiency significantly contributed to the moral and life support of the U.S. military personnel.

If a heightened risk exists because he has parents and siblings in Sudan, he has mitigated that concern under AG ¶ 8(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 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."

Applicant's has a half-brother who is a medic in the Army of Southern Sudan. The southern part of Sudan is pro U.S. and pro west. Applicant has had limited contact with this individual. None of his siblings are involved with organizations which seek to harm the U.S. Since 1987, Applicant has not seen his parents, son, or siblings except for his half-brother who lives in the U.S. Since returning from Iraq, he has called his father once to check on his health. During his deployment to Iraq, he did not contact his parents or siblings and all communications with them were through his wife. His parents and siblings think he is working for an oil company. His parents, son, and siblings have not experienced any repercussions from any source because of Applicant.

The Government of Sudan's human rights record has remained poor, and there are numerous serious problems including genocide, extrajudicial and unlawful killings, torture, beating, rape, cruel and inhumane treatment by security forces, and arbitrary arrest and detention. Life in the South is very difficult. Applicant has no love for the Government of Sudan. During his first year of high school, there was an attempt on his life and he has been beaten several times by government security forces. He spent six months hiding in the jungle before walking to a UN displaced persons camp. He left Sudan as a refugee. Additionally, his wife has no love for the Sudanese government. Her former husband and some of her siblings were killed in Sudan by the Sudanese government.

There is little likelihood that Applicant will be placed in a position of having to choose between the interests of the U.S. and a foreign entity. Likewise, because of his

close ties and his loyalties to the U.S., he would resolve any conflict of interest in favor of the U.S.

Whole Person Concept

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the totality of Applicant's family ties to Iraq and the heavy burden an Applicant carries when he has family members in a foreign country.

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) the 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.

Since leaving Sudan, Applicant has not returned. His communication with his parents is limited and with his siblings almost non-existent. Because he guided the Army personal on customs and nuances related to the spoken word, translated documents, and responded very well in highly dangerous situations, the Army views him as a valuable resource in helping it achieve its mission in Iraq.³

³In ISCR Case No. 05-03846 at 6 (App. Bd. Nov.14, 2006), the Appeal Board recognized an exception to the general rule in Guideline B cases when "an applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurs in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security . . . [and therefore he] can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation."

While danger certainly exists for all who go to Sudan, Applicant's son, parents, and siblings are in no greater danger than any other individual living and working in Sudan.

As previously stated neither Applicant nor his wife have any love for the government of Sudan. Not only was he beaten by security forces, but his wife's former husband and some of her siblings were killed in Sudan by the Sudanese government. Frequently, Applicant went in harms way to assist U.S. military forces in performing their duties in Iraq. The only reason he is not there now is because he lost his clearance because of his relatives living in Sudan. Should he be granted a clearance, he intends to return to Iraq to continue working with the U.S. military.

I have carefully weighed the evidence in favor of Applicant against the government's concerns about Applicant's ability to protect classified information. I find that there is little potential for Applicant to be pressured, coerced, or exploited because he has four siblings living in Iraq. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence security concerns.

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

Subparagraph 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.

CLAUDE R. HEINY II
Administrative Judge