



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



In the matter of:)
)
) ISCR Case No. 08-01734
)
)
Applicant for Security Clearance)

Appearances

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

January 14, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is denied.

On March 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. 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 in writing on April 10, 2008, and elected to have his case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on June 3, 2008. In the FORM Department Counsel requested that administrative notice be taken of Items 5 and 6. The FORM was mailed to Applicant on August 31, 2009, and it was received on September 15, 2009. Applicant

was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM or the request for administrative notice, and did not submit additional material. Department Counsel's administrative notice request is granted. The case was assigned to me on December 7, 2009.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶ 1.h. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 40 years old and has worked as a linguist for a defense contractor since June 2006. He was born in Sudan and became a naturalized U.S. citizen in March 2005. He married a U.S. citizen in 1997, and they divorced in 2003. He has no children. Applicant attended college, but did not earn a degree.

Applicant's mother, two brothers, a sister, and an uncle are citizens and residents of Sudan. He has a sister and brother-in-law who are citizens of Sudan and residents of the United Arab Emirates (UAE). He has a friend who is a citizen of the UAE and resides there. He has another friend who is a citizen of the UAE and resides in the U.S. He has another friend who resides in the UAE, but no information was provided as to his citizenship.

Applicant provided approximately \$30,000 in financial support to his family in Sudan. He traveled to Sudan and to the UAE in January 2006 to visit his family and friends. In his response to the SOR, he stated he has a big family who live in Sudan and the UAE, and he feels it is his responsibility to call them and to help them financially. He has adopted the United States as his country and relinquished his Sudanese citizenship.

Regarding his three friends who live in the UAE, he considers them good men with whom he went to college and they decided to move back to their birth place.

His sister and brother-in-law moved to the UAE because the living conditions were very bad in Sudan.

Applicant stated in his answer to the SOR that he has lived in the United States for 14 years, went to college, paid taxes and owned a home. He has worked with the U.S. government overseas. No other information was provided.¹

¹ Item 3.

Sudan²

In 1953 the United Kingdom and Egypt concluded an agreement that provided for self-government for Sudan. After a transitional period, Sudan became independent in 1956. Since then they have experienced years of civil war with efforts to bring about peace. In 2005, a Comprehensive Peace Agreement was signed, establishing a new Government of National Unity and the Interim Government of Southern Sudan. The interim period allowed for the implementation of the Comprehensive Peace Agreement and elections at all levels. The key provisions of this agreement have faltered.

A rebellion in Darfur resulted in the deaths of tens of thousands of persons there and has led to an estimated two million internally displaced persons in Sudan. The Sudanese Government is accused of being complicit in the bombing, murder, and rape of innocent displaced persons from Darfur. The Sudanese President has demonstrated a continued refusal to honor his commitment to end the violence in Darfur.

In 1993, the U.S. Secretary of State designated Sudan as a state sponsor of terrorism and they continue to remain on the list despite pursuing terrorist operations directly involving threats to U.S. interests. Sudan is under a broad U.S. embargo with extensive trade restrictions on exports to Sudan. The United States considers Sudan a threat to national security and the foreign policy of the United States

Sudan's human rights record is poor and there are numerous serious abuses, including, extrajudicial and other unlawful killings by government forces, torture, beatings, rape, and other cruel and inhumane treatment by security forces. There are arbitrary arrests and detentions, executive interference with the judiciary, and denial of due process, restrictions on citizens' privacy, and restrictions on freedom of speech, press, assembly, religion, and movement. The U.S. State Department continues to warn against all travel to Sudan. It also has indicated that terrorists are known to operate in Sudan and seek opportunities to carry out attacks against U.S. interests. In addition, anti-American sentiment is prevalent and Americans are warned to exercise the utmost caution in Sudan.

United Arab Emirates³

The UAE is a federation of emirates, each with its own ruler. The federal government is a constitutional republic, headed by a president and council of ministries. 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. Only 15-20% of the UAE's population are UAE citizens. The remaining population includes significant numbers of other Arabs, including many Iranians. The government of UAE has expressed fears that

² Item 5.

³ Item 6.

the large Iranian–origin community in the Dubai emirate could pose a threat to UAE stability.

There are problems in the UAE with regard to human rights, including, arbitrary arrests and indefinite incommunicado detention, government restriction on civil liberties, a lack of judicial independence, political organizations and political parties. Labor unions are illegal and private associations must follow censorship guidelines and receive governmental approval before anything is published.

The UAE does not recognize dual nationality, and UAE authorities have confiscated U.S. passports of dual nationals.

The United States and UAE have had friendly relations since 1971. The UAE contributes to the continued security of the Persian Gulf, and is a partner against terrorism. However, the UAE is one of only three countries that recognized the Taliban as the legitimate government of Afghanistan and two of the September 11, 2001, hijackers were from the UAE. The UAE’s cooperation in counterterrorism operations to target persons suspected of smuggling cash from terrorist-source countries has been met with resistance. Dubai, in the UAE, has been the key transfer point for illicit sales of nuclear technology to Iran, Libya and North Korea. There have also been cases of illegal export, or attempted illegal export, of U.S. restricted, dual use technology to the UAE, including products with potential nuclear and military applications.

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 used 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 commonsense 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 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

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding 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 ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

(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.

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. Applicant's mother, two brothers, a sister and an uncle are citizens and residents of Sudan. He traveled to Sudan in 2006 to visit his family. He has a sister and brother-in-law who are citizens of Sudan and residents of UAE. He traveled there to visit them in 2006. He acknowledges he stays in contact with his family and feels an obligation and responsibility to support them. He provided approximately \$30,000 in financial support to his family. His relationship with his family creates a heightened risk of foreign pressure or attempted exploitation, and also creates a conflict of interest because his continuing relationships are sufficiently close to raise a security concern. Therefore, I find disqualifying conditions (a) and (b) apply. Applicant has a friend who is a citizen and resident of the UAE, another friend who resides in the UAE, whose citizenship is unknown, and a third who is a citizen of the UAE, residing in the United States. Regarding Applicant's friends, I find both of the above disqualifying conditions also apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

(a) the nature of the relationship 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 and interests of the U.S.;

(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 interests in favor of the U.S. interests; and

(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.

Applicant admitted he maintains contact with his family and friends in Sudan and the UAE, and he feels an obligation and responsibility towards his family. He provides them financial support. He did not offer sufficient evidence to mitigate the security concerns. Applicant has not met his burden of establishing that it is unlikely he will be

placed in a position of having to choose between the interests of his family and friends living in Sudan and the UAE, and the interests of the United States. His contacts with family and friends in Sudan and the UAE could potentially force him to choose between the two.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the foreign government, or the country is known to conduct intelligence operations against the United States. Sudan is a designated state sponsor of terrorism, has a poor human rights record, and has terrorists known to operate within its borders. The UAE, although it has friendly relations with the U.S., has human rights problems and has been uncooperative in addressing terrorist operations within its borders. It has been the key transfer point for illicit sales of nuclear technology to Iran, Libya and North Korea. There have been cases of illegal export, or attempted export of U.S. restricted dual use technology to the UAE, including products with potential nuclear and military applications. The burden of persuasion is on Applicant to demonstrate that his contacts in Sudan and the UAE do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the U.S. and his family and friends. With Sudan and the UAE's negative human rights record and the terrorist operations within their borders, it is conceivable that Applicant's family members and friends could be vulnerable to coercion. Applicant has not met his burden. I find mitigating condition (a) does not apply.

Applicant has been a U.S. citizen since 2005. He failed to provide sufficient information about any family ties he may have in the United States. He maintains contact with his family in Sudan and the UAE. He failed to provide sufficient evidence to mitigate his contacts. He did not offer sufficient evidence regarding his relationship with his friends who are citizens of the UAE or who live there. Considering Sudan and the UAE human rights record and the potential conflict of interest, I find there is insufficient evidence to apply mitigating condition (b).

Security concerns are reduced where contact and correspondence with foreign citizens are casual and infrequent because the risk of foreign exploitation or pressure is less. Applicant visits and provides financial support to his family. These contacts are not casual and infrequent. He failed to provide sufficient evidence about his relationship with his friends. I find mitigating condition (c) does not apply.

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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has been a U.S. citizen since 2005 and is working for a defense contractor as a linguist overseas. He feels a responsibility and obligation towards his family who are citizens and residents of Sudan and the UAE.⁴ He has friends who are citizens of or reside in the UAE. He did not provide sufficient information to mitigate the security concerns raised by these contacts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Foreign Influence.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant

⁴ Applicant provided financial support and visited his family in Sudan and the UAE. I find these facts are not disqualifying, but are evidence of his close relationship with his family.

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge