



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



In the matter of:)	
)	
)	ISCR Case No. 08-06017
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

November 30, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the foreign influence concerns that exist due to his family ties to Sudan and his recent and extended visit with them in the Darfur region.

On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges security concerns under Guidelines B (foreign influence). Applicant's response to the SOR was received by the DOHA on May 28, 2009. Applicant admitted all SOR allegations except those contained in subparagraphs 1.c and 1.f, which he denied. He requested a hearing.

The case was assigned to me on July 1, 2009. A notice of hearing was issued on July 15, 2009, scheduling the hearing for August 19, 2009. The hearing was conducted as

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

scheduled. The government submitted 15 documentary exhibits that were marked as Government Exhibits (GE) 1-15. GE 1 and 2 were admitted into the record without objection. Administrative notice was taken of the contents of GE 3-15 without objection. Department Counsel submitted a document containing written comments on the contents of GE 3-15 for my consideration which was marked as Appellate Exhibit (App. Ex. I), and made part of the record without objection.

Applicant testified, and submitted two documentary exhibits that were marked as Applicant Exhibit (AE) 1 and 2, and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documentary evidence. Three documents were timely received, marked as AE 3-5, and admitted into the record without objection. Department Counsel's forwarding memorandum was marked as App. Ex. II, and made part of the record. The transcript was received on August 27, 2009.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 46-year-old man who has been employed as a linguist by a defense contractor since July 2006. He has worked with U.S. military forces serving in Iraq since 2006. His duties include riding in military vehicles with military security forces outside secure areas to serve as a translator. He has repeatedly been exposed to hostile fire while in base camps and to the constant threat of encountering improvised explosive devices (IEDs) while outside those camps. Applicant has earned a reputation with the U. S. military forces with whom he has served as an outstanding translator who is dependable and trustworthy.

Applicant was born and raised in Sudan. His father was a camel herder until environmental conditions caused him to turn to farming. Applicant's father has been married and divorced seven times. Applicant was the only one of his father's many children to be provided a formal education until Applicant gave financial assistance to one of his half-brothers to attend school. That half-brother is now employed in Sudan as a teaching assistant at a university.

Applicant graduated from high school in Sudan in 1982. He then attended a trade school in Sudan where he learned about weights and measures. He was employed by the Sudanese government in the Department of Weights and Measures from 1986 until 1992. He immigrated to Oman in 1992 where he obtained employment in the government office of the Ministry of Commerce. Applicant worked in Oman until he immigrated to the United States in 1999.

Applicant returned to Sudan from Oman in 1996 to enter into an arranged marriage. He married his wife, a natural born Sudanese citizen, in Sudan on November 4, 1996. Following the marriage, Applicant returned to Oman while his wife remained in Sudan where she was employed as a teacher. She joined him in Oman in 1998. Applicant's first child was born in Oman in June 1999.

Applicant's wife applied for a "lottery visa" to enter the United States while she was still residing in Sudan. She won that lottery in 1997, but she was not actually granted a visa until 1999. Applicant, his wife, and their child immigrated to the United States in 1999. Upon their entry into the United States, Applicant and his family took up residence in the same state where they now reside. Applicant worked sequentially for three different businesses before he was hired as a translator in 2006. His wife worked sequentially for the same three companies until 2006, when she became a stay-at-home mother for their four children. Applicant's child who was born in Oman is now ten years old. His other children are seven, six, and three years old.

Applicant and his wife became naturalized United States citizens on April 20, 2005. He obtained a United States passport on June 17, 2005. He still possesses a Sudanese passport that expired in 2000.

Applicant's father is 80 years old. His mother is 69 years old. They are divorced but both reside in the Darfur region of Sudan. Applicant has virtually no contact with his mother because she does not have access to a telephone. He speaks with his father a couple of times a year by telephone. Applicant sends his parents money every few months, totaling between \$500 and \$1,000 annually.

Applicant has a 48-year-old sister who is a citizen and resident of Sudan. Her husband is a camel herder/farmer. Applicant has five half-brothers and four half-sisters who are citizens and residents of Sudan. One of his half-brothers worked as a sheep herder in Libya for about three years, but he has now returned to Sudan. All of Applicant's half-siblings are herders/farmers and reside in the Darfur region of Sudan. With the exception of the half-brother for whom he provided financial educational assistance, Applicant has had minimal on going contact with his half-siblings since he left Sudan.

Applicant's wife's parents are citizens and residents of Sudan. They live several hundred miles outside the Darfur region. Her father is a retired farmer and her mother is a housewife. Applicant's wife contacts her parents by telephone on occasion. In 2007, Applicant's mother-in-law and father-in-law visited with him and his family in the United States for about three months. Applicant paid for the visit. Applicant also has seven brothers-in-law and six sisters-in-law who are citizens and residents of Sudan. Applicant's wife contacts one of her sisters by telephone about three times a year.

Applicant's wife visited with her family in Sudan in 2005. Applicant, his wife, and their children visited with their families in Sudan in 2009. Applicant's visit lasted from July 17, 2009, until August 16, 2009. Applicant's wife and children were still visiting in Sudan at the time of the hearing in this case. They stayed for a portion of the visit with Applicant's relatives in the Darfur region, and the rest of the visit with Applicant's wife's relatives in the area where her parents reside. Applicant's decision to visit Sudan was due to his father's poor health. Applicant acknowledged he will likely visit Sudan in the future.

According to the United States Department of State, the Government of Sudan requires all travelers to present a passport and an entry visa to enter Sudan; and only American citizens who also possess a Sudanese national identification document (such as a Sudanese passport or national identification card) may apply for an entry visa at the

Khartoum International Airport (GE 4). Applicant did not have a visa when he arrived in Khartoum in July. He denies he used any sort of Sudanese identification to enter the country and instead testified he was required to have a relative meet him and his family at the airport and vouch for their entry.

Applicant applied for the grant of a small parcel of land from the Sudanese Government in about 1992. He believes that application is still pending. If he is ever actually awarded the land, he estimates it would be worth between \$3,000 and \$4,000. Applicant owns a house in the United States that he values at about \$140,000. His equity in the house is about \$125,000. He estimates his other net worth holdings in the United States are worth about \$60,000. Applicant's current salary is approximately \$145,000.

Sudan backed Iraq when it invaded Kuwait and provided sanctuary and assistance to Islamic terrorist groups. In the early to mid-1990s, Carlos the Jackal, Osama bin Laden, Abu Nidal, and other terrorist leaders resided in Sudan, and in 1997, the U. S. imposed comprehensive economic, trade, and financial sanctions against Sudan. In August 1998, in the wake of East Africa embassy bombings, the U. S. launched cruise missile strikes against Sudan. (GE 3)

Sudan was designated a State Sponsor of Terrorism by the U. S. Department of State on August 12, 1993. (GE 10) Al-Qa'ida-inspired terrorist elements, and elements of both Palestine Islamic Jihad and Hamas remain in Sudan. Al-Qa'ida leadership has called for "jihad" against UN forces in Darfur. Other extremist groups have also threatened attacks against Western interests in Sudan. (GE 11)

On January 1, 2008, unknown assailants shot and killed two U. S. Embassy employees - an American USAID officer and a Sudanese driver. (GE 4) On April 9, 2009, The U.S. Department of State warned U. S. citizens of the risks of travel to Sudan and recommended that American citizens defer all travel to Sudan due to uncertain security conditions and the possibility of violence and harassment targeting westerners (GE 5). In March 2009, the government of Sudan expelled numerous aid groups from the country and senior government officials publicly called humanitarian aid workers "spies". (GE 5)

Conflict in Darfur continued despite the 2006 Darfur Peace Agreement between the government and a faction of the Sudan Liberation Movement/Army. Civilians in Darfur continued to suffer from the effects of genocide. Government forces bombed villages, killed civilians, and collaborated with militias and tribal factions to raze villages and perpetrate violence against women. The government's human rights record remained poor, and there were numerous serious abuses, including: extrajudicial and other unlawful killings by government forces and other government-aligned groups; disappearances, including hundreds of Darfuris; torture, beatings, rape, and other cruel, inhumane treatment or punishment by security forces. (GE 9)

Applicant denies that any of his relatives living in Darfur are members of the militias or government forces that have been responsible for the genocide and other violence that continues in that region. However, his brother-in law, his uncle, and his cousin have been murdered by militias operating in Darfur.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B (foreign influence) with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶

Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸ No one has a right to a security clearance⁹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Analysis

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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.

Applicant and his wife have numerous relatives who are citizens and residents of Sudan. He contacts his father on occasion and he sends his mother and father financial assistance on a regular basis. Applicant's wife contacts her parents and one of her sisters on a regular basis. Her parents visited here for about three months in 2007, and she visited with them in Sudan in 2005, and again in 2009. Applicant visited in Sudan for a month from July to August 2009, including a visit with his family members in Darfur. Disqualifying Conditions (DC) 7(a): *contact with a foreign family member . . . 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 DC 7(d): *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion* apply.

There is no reason to doubt that Applicant is a completely loyal United States citizen or to suspect that he possesses any sense of loyalty or obligation to Sudan. The letters of recommendation submitted on Applicant's behalf by U.S. military personnel who have worked closely with him in a combat zone attest to his efforts on behalf of U. S. military operations in Iraq and strongly attest to his dependability, responsibility, and loyalty to the United States.¹²

However, Applicant has many relatives who are citizens and residents of Sudan, including his parents, his sister, many half-brothers and half-sisters, and his in-laws.

¹² The Appeal Board has stated: As a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value (citations omitted) However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to national security. (citations omitted) The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report attempts at coercion or exploitation.

When an "Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S., [his behavior] constitute[s] important evidence that Applicant's ties and sense of obligation to the U.S. could be sufficiently strong that he [could] be expected to resolve any conflict of interest in favor of the U.S. Directive ¶ E2.8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (Applicant's work as an interpreter in Afghanistan occurred "in the context of dangerous, high-risk circumstances in which [he] made a significant contribution to the national security.") ISCR Case No. 06-25928 at 3-4 (App. Bd. Apr 9, 2008).

Applicant's relatives live in the extremely dangerous Darfur region of Sudan. His close continuing ties to many of his relatives have been exhibited by the financial support he continues to provide to them and the extended trip he just recently took to Sudan, including the Darfur region. Applicant's wife also has obviously strong ties of affection to her parents as exhibited by her trips to visit them in Sudan in 2005 and 2009, and their visit with her in the United States in 2007. She and her children were still visiting with her family in Sudan at the time of the hearing of this case.

Considering the country and region of that country where Applicant's relatives reside, his recent visit to Darfur, his wife's multiple visits to Sudan, his acknowledgment that he will likely visit Sudan in the future, and the obviously close ties of affection Applicant and his wife have to their Sudanese relatives, no mitigating condition applies.¹³

Applicant is entitled to substantial consideration under the "whole person" concept. For past three years he has placed himself in harm's way by deploying to Iraq and engaging in routine patrols outside secure areas with U.S. military units. He has earned high praise from and the support of many military members with whom he has served. Having observed his appearance, demeanor, and manner of testifying, I find his assertions of undivided loyalty to the United States to be credible. Applicant is additionally entitled to credit for his work ethic, as evidenced by his continued gainful employment both before and after he immigrated to the United States.

I have considered all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying conditions. Having done so, I am forced to conclude that Applicant has failed to mitigate the foreign influence security concern. He has neither overcome the case against him nor satisfied his ultimate burden of persuasion. Guideline B is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

¹³ The potentially applicable mitigating conditions (MC) in this case are:

MC 8(a): the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those person 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.;

MC 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

MC 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.

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-i: Against Applicant

Conclusion

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

Henry Lazzaro
Administrative Judge

