



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 10-04322

**Appearances**

For Government: Paul M. Delaney, Esquire, Department Counsel

For Applicant: *Pro se*

June 13, 2011

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On March 16, 2006, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories. He responded to the interrogatories on August 24, 2010.<sup>2</sup> On an unspecified date, DOHA furnished him another set of interrogatories. He responded to the interrogatories on August 24, 2010.<sup>3</sup>

<sup>1</sup> Item 5 (SF 86, dated March 16, 2006).

<sup>2</sup> Item 6 (Applicant's Answers to Interrogatories, dated August 24, 2010).

<sup>3</sup> Item 7 (Applicant's Answers to Interrogatories, dated August 24, 2010).

On November 19, 2010, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline B (Foreign Influence) and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on December 21, 2010. In a sworn statement, dated February 5, 2011, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was sent to Applicant on March 15, 2011,<sup>4</sup> and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on March 30, 2011. On April 26, 2011, Applicant submitted a letter with eight attachments. The case was assigned to me on May 27, 2011.

### **Rulings on Procedure**

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Republic of Sudan (Sudan), appearing in 12 written submissions. Facts are proper for administrative notice when they are verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Sudan in publications of the White House,<sup>5</sup> U.S. Department of State,<sup>6</sup> and the Congressional Research Service.<sup>7</sup>

---

<sup>4</sup> The cover page of the FORM is dated March 8, 2011, but the letter transmitting the FORM to Applicant, as well as the letter transmitting the entire file to me, both indicate the FORM was not sent to Applicant until March 15, 2011.

<sup>5</sup> The White House, Office of the Press Secretary, Press Release, *Statement by the President on the Intent to Recognize Southern Sudan*, dated February 7, 2011; Exec. Or. 13412, *Blocking Property of and Prohibiting Transactions With the Government of Sudan*, dated October 13, 2006; Exec. Or. 13067, *Blocking Sudanese Government Property and Prohibiting Transactions With Sudan*, dated November 3, 1997.

<sup>6</sup> U.S. Department of State, *Country Specific Information: Sudan*, dated December 27, 2010; Bureau of African Affairs, *Background Note: Sudan*, dated November 9, 2010; U.S. Department of State, Office of the Coordinator for Counterterrorism, *State Sponsors of Terrorism*, dated August 5, 2010; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2009 Human Rights Report: Sudan*, dated March 11, 2010; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Sudan*, dated January 7, 2011; U.S. Department of State, Press Release, *Congratulating Sudan on the Results of the Southern Sudan Referendum*, dated February 7, 2011; U.S. Department of State, Fact Sheet – African Affairs, *U.S. Sanctions on Sudan*, dated April 23, 2008; U.S. Department of State, Fact Sheet – African Affairs, *Overview of Treasury and Commerce Regulations Affecting U.S. Exports to Sudan*, dated March 23, 2007.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,<sup>8</sup> as set forth below under the Sudan subsection.

### Findings of Fact

In his Answer to the SOR, Applicant generally admitted all of the factual allegations (¶¶ 1.a. through 1.d.) of the SOR. Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 50-year-old employee of a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been specified. He has been employed as a linguist/interpreter for the U.S. Army with his current employer, a government contractor, since March 2006.<sup>9</sup> In this position, he has served in hazardous positions in Iraq, questioning detainees, supporting liaison with Iraqi police, accompanying U.S. military members on patrols, sweeping missions, “cordon and knocks,” raids, and improvised explosive device (IED) removal missions.<sup>10</sup> He was injured during one mission when his vehicle was struck by an IED.<sup>11</sup> Over the years, Applicant held a number of positions with various employers. He was unemployed from February 1994 until March 2000;<sup>12</sup> an assembler from April 2000 until July 2000;<sup>13</sup> a temporary employee of an unspecified responsibility in August 2000;<sup>14</sup> unemployed from August 2000 until September 2000;<sup>15</sup> an assembler from September 2000 until February 2001;<sup>16</sup> a pizza deliverer from February 2001 until March 2001;<sup>17</sup> an electrical

---

<sup>7</sup> Congressional Research Service, Report for Congress, *Sudan: The Crisis in Darfus and Status of the North-South Peace Agreement*, dated December 16, 2010.

<sup>8</sup> Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

<sup>9</sup> Item 5, *supra* note 1, at 12.

<sup>10</sup> Item 4 (Character reference, dated April 1, 2008), at 1, attached to Applicant's Answer to the SOR, dated February 5, 2011).

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 22-23.

<sup>13</sup> *Id.* at 21-22.

<sup>14</sup> *Id.* at 20-21.

<sup>15</sup> *Id.* at 20.

<sup>16</sup> *Id.* at 19-20.

winder from April 2001 until June 2001;<sup>18</sup> a machine operator from June 2001 until November 2001;<sup>19</sup> unemployed from December 2001 until March 2002;<sup>20</sup> unemployed from May 2002 until September 2002;<sup>21</sup> a machine operator from September 2002 until August 2005;<sup>22</sup> and an Americorp member from September 2005 until March 2006,<sup>23</sup> when he joined his current employer.

Applicant was born in 1961 in Sudan.<sup>24</sup> The record is silent regarding Applicant's early life in Sudan. He left Sudan in the 1980s because of the ethnic cleansing and government atrocities, and went to Egypt to attend school.<sup>25</sup> He obtained a degree in November 1991.<sup>26</sup> In January 1999, Applicant was married in Egypt to a citizen of Sudan.<sup>27</sup> Applicant and his wife immigrated to the United States in January 2000,<sup>28</sup> and they both became naturalized U.S. citizens in November 2005.<sup>29</sup> Applicant and his wife have two children, a daughter born in Egypt in November 1999, and a son born in the United States in July 2002.<sup>30</sup> As refugees in Egypt, Applicant's daughter was not granted Egyptian citizenship upon birth,<sup>31</sup> but when Applicant and his wife were naturalized, his daughter also became a naturalized U.S. citizen.<sup>32</sup> Applicant's immediate family resides in the United States.<sup>33</sup>

---

<sup>17</sup> *Id.* at 18-19.

<sup>18</sup> *Id.* 17-18.

<sup>19</sup> *Id.* at 16-17.

<sup>20</sup> *Id.* at 16-17.

<sup>21</sup> *Id.* at 15.

<sup>22</sup> *Id.* at 14-15.

<sup>23</sup> *Id.* at 13-14.

<sup>24</sup> *Id.* at 6.

<sup>25</sup> Item 7 (Personal Subject Interview, dated August 3, 2007), at 1, attached to Applicant's Answers to Interrogatories.

<sup>26</sup> Item 5, *supra* note 1, at 11.

<sup>27</sup> *Id.* at 24.

<sup>28</sup> Item 7 (Personal Subject Interview), *supra* note 25, at 1.

<sup>29</sup> Item 5, *supra* note 1, at 7, 25.

<sup>30</sup> *Id.* at 28-29.

<sup>31</sup> Item 6 (Applicant's Answers to Interrogatories, dated August 24, 2010), at 5. But see Item 7 (Special interview, dated March 16, 2010), at 1, attached to Applicant's Answers to Interrogatories, wherein Applicant allegedly claimed his daughter was a citizen of Egypt. When asked if the information in his purported statement about his daughter's citizenship was accurate, he contended it was not. See Item 7 (Applicant's Answers to Interrogatories, dated August 24, 2010), at 11.

<sup>32</sup> *Id.* Item 6.

<sup>33</sup> Item 5, *supra* note 1, at 9, 24, 28, 30.

When Applicant and his wife became naturalized U.S. citizens, they renounced their Sudanese citizenship<sup>34</sup> and took an oath of allegiance to the United States. That oath included the words:<sup>35</sup>

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen.

Applicant's Sudanese-born father is deceased.<sup>36</sup> His mother was born in Sudan and is a retired farmer, still residing in Sudan.<sup>37</sup> Applicant has three brothers, a half-brother, a sister, and a half-sister, all born in Sudan, and still residing there.<sup>38</sup> His half-brother is retired from a position with a Sudanese school;<sup>39</sup> two brothers are welders;<sup>40</sup> one brother is a restaurant owner;<sup>41</sup> and his sisters are housewives.<sup>42</sup> Neither his mother, nor any of his siblings, has ever had any affiliation with the Sudanese military or intelligence service.<sup>43</sup> His half-brother worked for the Sudanese government in an unspecified position believed to be through his past affiliation with the school.<sup>44</sup> Applicant's mother and siblings have never held political affiliations.<sup>45</sup> Applicant's mother-in-law was born in Sudan, and she still resides there, working as a housekeeper.<sup>46</sup> He also has an uncle who, in 2007, was serving in the Sudanese military.<sup>47</sup>

---

<sup>34</sup> Item 7 (Personal Subject Interview), *supra* note 25, at 1.

<sup>35</sup> 8 C.F.R. § 337.1(a) (1995).

<sup>36</sup> Item 5, *supra* note 1, at 27-28.

<sup>37</sup> Item 7 (Special interview), *supra* note 31, at 1, attached to Applicant's Answers to Interrogatories. Some details pertaining to Applicant's family members have not been included in order to protect their respective rights to privacy. Specific information is available in the cited exhibits.

<sup>38</sup> *Id.* at 1-6.

<sup>39</sup> *Id.* at 1.

<sup>40</sup> *Id.* at 2-3.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 3-4.

<sup>43</sup> *Id.* at 1-4.

<sup>44</sup> *Id.* at 1-4.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 4.

<sup>47</sup> Item 7 (Personal Subject Interview), *supra* note 25, at 1.

Applicant's relationships with his extended family have evolved over the years. For an unspecified number of years, he had not had any personal contact with his family since he departed Sudan for Egypt.<sup>48</sup> From 1984 until 1999, he maintained mail contact with various family members several times per year.<sup>49</sup> Things changed somewhat after he came to the United States. In 2007, he maintained monthly telephone contact with two brothers.<sup>50</sup> No other family member had telephones.<sup>51</sup> Applicant had no contact with his uncle.<sup>52</sup> From 2000 until 2010, Applicant had telephone contact with various family members once every few months.<sup>53</sup> He has also sent various family members small amounts of money (between \$200 and \$500) every few months to once per year.<sup>54</sup> Applicant visited his mother and siblings on two occasions since 1984: in 1987 and 2008.<sup>55</sup> Applicant has no financial interests in Sudan.<sup>56</sup>

Applicant and his wife initiated efforts to sponsor various family members for permanent entry into the United States.<sup>57</sup> In August 2010, in response to Applicant's petition, the U.S. Department of Homeland Security (DHS), Citizenship and Immigration Service (USCIS), commenced immigration action for Applicant's mother.<sup>58</sup> The petitions pertaining to Applicant's mother-in-law and two sisters-in-law were already approved in 2010.<sup>59</sup> Applicant's nephew arrived in the United States in August 2010.<sup>60</sup> Applicant is preparing to bring the rest of his foreign family members to the United States "gradually."<sup>61</sup>

---

<sup>48</sup> *Id.*

<sup>49</sup> Item 7 (Special interview), *supra* note 31, at 1-4.

<sup>50</sup> Item 7 (Personal Subject Interview), *supra* note 25, at 1.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Item 7 (Special interview), *supra* note 31, at 1-4.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Item 4 (Applicant's Answer to the SOR, dated February 5, 2011), at 1.

<sup>57</sup> *Id.*

<sup>58</sup> Item 4 (USCIS Form I-797C, Notice of Action, dated August 25, 2010), attached to Applicant's Answer to the SOR.

<sup>59</sup> Item 4, *supra* note 56, at 1; Item 4 (USCIS Form I-797C, Notice of Action, dated August 2, 2010, and USCIS Form I-797C, Notice of Action, dated November 16, 2010), attached to Applicant's Answer to the SOR.

<sup>60</sup> Item 4, *supra* note 56, at 1.

<sup>61</sup> *Id.*

## Character References and Work Performance

The commanding officer and the officer in charge of the human intelligence exploitation teams of the U.S. Army and U.S. Marine Corps with whom Applicant worked in Iraq are effusive in their praise for Applicant. For example, the commanding officer of one Marine team commented:<sup>62</sup>

He directly contributed his efforts to provide tactical information, enforce our commitment to safeguard local Iraqis, and performed numerous raids that led to the capture of insurgents who have engaged in attacks against coalition forces (CF) and Iraqi Security Forces (ISF). . . .

Throughout the most difficult of situations, including stress, combat, and heat, [Applicant] displayed an unfettered professional attitude. [Applicant] seamlessly integrates according to the operational environment, and quickly adapts to the dynamic and often spontaneous situations required . . . in support of a [human intelligence exploitation team]. . . .

[Applicant] has been a trusted team player and is a part of our family. He has been a mentor to the younger Marines and a pleasure to have with us in this sometimes-uncomfortable environment. . . .

[Applicant] is one of a kind in terms of selflessness, drive and linguistic skill. I would gladly serve with [Applicant] in Combat or Garrison.

## Sudan

Sudan has been designated by the U.S. Department of State as a state sponsor of terrorism since 1993. While Sudan continues to pursue counterterrorism operations directly involving threats to U.S. interests and personnel in Sudan, the Sudanese Government openly supports Hamas, considering its members freedom fighters. Nevertheless, in January 2011, the United States announced that the process of withdrawing the “state sponsor of terrorism designation” once Sudan complied with the previously agreed-upon Comprehensive Peace Agreement of 2005 (CPA), as well as current U.S. policy. That policy, announced in 2009, was essentially: 1) achieve a definitive end to conflict, gross human rights abuses and genocide in Darfur; 2) implementation of the CPA, resulting in a peaceful post-2011 Sudan, or an orderly path toward two separate and viable states at peace with each other; and 3) ensure that Sudan does not provide a safe haven for international terrorism.

The Sudanese Government has engaged in significant human rights abuses, including extrajudicial and other unlawful killings by government forces; 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; restrictions on citizens’ privacy; restrictions on the freedoms of speech, press,

---

<sup>62</sup> Item 4 (Character reference, dated October 2, 2007), at 1-2, attached to Applicant’s Answer to the SOR.

assembly, association, religion, and movement; trafficking in persons; violence and discrimination against women and ethnic minorities; and forced labor. The government monitors Internet communications and the security service reads e-mail messages between private citizens. U.S. citizens are at risk when traveling in Sudan. Terrorists are known to operate in Sudan and continue to seek opportunities to carry out attacks against U.S. interests. A wide network of government informants conducts surveillance in schools, universities, markets, workplaces, and neighborhoods.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”<sup>63</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>64</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>65</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and it has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the

---

<sup>63</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>64</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>65</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).



applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>66</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>67</sup>

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>68</sup> Thus, 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. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

## **Analysis**

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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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

---

<sup>66</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>67</sup> *Egan*, 484 U.S. at 531

<sup>68</sup> See Exec. Or. 10865 § 7.

States citizens to obtain protected information and/or is associated with a risk of terrorism.

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.<sup>69</sup> Applicant's relationship with his mother, his siblings, and his wife's mother and siblings, all of whom are citizens and residents of Sudan, are current security concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion" is potentially disqualifying. Similarly, under 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" may raise security concerns. Also, under AG ¶ 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," is potentially disqualifying. I find AG ¶¶ 7(a), 7(b), and 7(d) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his family members who are Sudanese citizen-residents, to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where "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." Similarly, AG ¶ 8(b) may apply where the evidence shows:

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.

In addition, AG ¶ 8(c) may apply where "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." In this instance, Applicant's relationship with his

---

<sup>69</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

mother and siblings, or his mother-in-law and his wife's siblings, is neither casual nor infrequent. Accordingly, AG ¶ 8(c) does not apply as it pertains to them. AG ¶ 8(c) does, however, apply to his apparently non-existent relationship with his uncle.

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.<sup>70</sup> In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."<sup>71</sup>

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that the nature of the government in Sudan and the relationship it has with the United States, may make it more likely that Sudan would attempt to exploit a U.S. citizen through relatives or associates in Sudan.

As noted above, the absence of Sudanese government contacts or attempted contacts with Applicant or his mother, siblings, mother-in-law, or his wife's siblings, or the apparent absence, so far, of coercive means to obtain sensitive information, does not eliminate the *possibility* that Sudan would employ some coercive or non-coercive measures in an attempt to exploit a relative. There is no evidence that Applicant's extended family members are, or have been, political activists, challenging the policies of the Sudanese government; that terrorists have approached or threatened Applicant or his extended family members; that the Sudanese government has approached Applicant; or that his extended family members currently engage in activities that would bring attention to themselves.

Nevertheless, considering the Sudanese government and its position with respect to human rights, its aggressive intelligence operations against its own citizens, and its relationship with the United States, it is foreseeable that Applicant's extended family members could be a means through which Applicant could come to the attention of the regime. They could also be the vehicle through which Sudan might attempt to coerce Applicant. The obscurity of Applicant's extended family members is not a meaningful basis for concluding that they are beyond the reach of the regime. The Appeal Board has consistently held that factors such as an applicant's relatives' obscurity or the failure of foreign authorities to contact those relatives in the past do not provide a meaningful measure of whether an applicant's circumstances pose a security

---

<sup>70</sup> See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

<sup>71</sup> ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

risk, when, for example, the relatives are subject to the authority of a regime that is hostile to the United States and has a dismal human rights record.<sup>72</sup>

However, the significance of the heightened risk is minimized by several factors. Applicant is willing to risk his life as part of his duties on behalf of the U.S. combat forces in Iraq. He is fully aware of those risks, and has survived several incidents, one of which resulted in his being wounded. These circumstances demonstrate that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him.<sup>73</sup> Applicant's extended family members are in various stages of the process of immigrating to the United States. Also, Applicant, a civilian veteran of combat serving in a combat zone with the U.S. military, has such deep and longstanding relationships and loyalties in the U.S., both to his wife and children, and to the United States and its military services, that he can be expected to resolve any conflict of interest in favor of the U.S. interest AG ¶¶ 8(a) and 8(b) apply. Even if AG ¶ 8(b) does not fully apply, the security concerns are mitigated under the whole-person analysis below.

### **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's "closest family" - his wife and children - are American citizens residing in the United States. His extended family members are Sudanese citizens residing in Sudan, hoping to immigrate to the United States. Applicant is not vulnerable to direct coercion or exploitation so long as he remains outside of Sudan. However, should he return to Sudan, his vulnerability to

---

<sup>72</sup> See ISCR Case No. 07-18283 at 5 (App. Bd. Apr. 24, 2009); ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009).

<sup>73</sup> See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

direct coercion or exploitation rises significantly. His vulnerability to indirect coercion or exploitation through his extended family members while they remain in Sudan is possible. However, when Applicant becomes successful in bringing his extended family members to the United States, these security concerns will no longer be present, unless they return to visit family or friends living in Sudan.

Applicant is an interpreter for the U.S. Army with his current employer. In this position, he has served with U.S. military combat forces in hazardous positions in Iraq, questioning detainees, supporting liaison with Iraqi police, accompanying U.S. military members on patrols, sweeping missions, "cordon and knocks," raids, and IED removal missions. He was injured during one mission when his vehicle was struck by an IED.

A Guideline B decision concerning Sudan must take into consideration the geopolitical situation in that country, as well as the potential dangers existing there. Sudan, an active state sponsor of terrorism, is not known to conduct aggressive intelligence operations and economic espionage against the United States. (See AG ¶¶ 2(a)(1) through 2(a)(9).)

Overall, the record evidence leaves me without significant questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

### **Conclusion**

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

---

ROBERT ROBINSON GALES  
Administrative Judge