



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



In the matter of:)	
)	
)	ISCR Case No. 10-04330
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

August 26, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for foreign influence. Accordingly, her request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on September 28, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On November 15, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).²

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines

Applicant signed a notarized Answer to the SOR on November 30, 2010, in which she admitted the allegation under Guideline B. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on May 18, 2011, and the case was assigned to me on June 3, 2011. DOHA issued a Notice of Hearing on July 8, 2011, and I convened the hearing as scheduled on July 28, 2011. I admitted two Government Exhibits, (GE) 1 and 2. Applicant testified, and offered one exhibit, which I admitted as Applicant Exhibit (AE) A.

Procedural Ruling

I take administrative notice of the facts relating to Sudan set forth in the 12 U.S. Government documents submitted by Department Counsel. (Hearing Exhibit II) The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following findings of fact.

Applicant, 37 years old, was born in Sudan. She is single and has no children. In 1998, she earned a bachelor's degree in mechanical engineering in Sudan. She worked there for a car company. She applied for a visa under the U.S. Department of State's diversity visa (DV) lottery program, and won a visa to come to the United States. She arrived in 2001, at the age of 27. From 2003 to 2004, she completed graduate-level courses at a U.S. university, but did not receive a degree. Applicant became a naturalized U.S. citizen in 2006. She has worked as an engineer for U.S. companies. She is currently a quality control manager for a defense contractor, where she has been employed since 2009. Applicant speaks Arabic, and has been assigned to work for a federal agency in Nigeria. This is her first application for a security clearance. She is applying for a top secret security clearance. (GE 1; AE A; Tr. 17-20, 30-31, 36-37)

Applicant's parents and siblings are citizens of Sudan and reside in a major city of northern Sudan. Her parents are both 63 years old, and both are retired from the teaching profession. Her father did not serve in the Sudanese military. They worked in public schools operated by the Ministry of Education. They do not receive government pensions. Applicant's parents own a home, but Applicant has told them she is not interested in any right she may have to the home. Her mother has visited Applicant

listed in Enclosure 2 to the Directive, and apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

twice in the United States. During her last visit, she stayed with Applicant for nine months in 2007-2008. Her parents are not aware that she is applying for a security clearance. They would like to move here permanently. Applicant plans to sponsor her parents to come to the United States. An immigration attorney informed Applicant that when a U.S. citizen sponsors relatives, the process takes approximately 18 months. Applicant had not yet initiated the process as of the date of the hearing. (GE 1, 2; AE A; Tr. 18, 21-25, 31, 37, 41, 45-46)

Applicant's 34-year-old brother is married with two children. He is a sales representative for a private telecommunications company. He has never served in the Sudanese military. Applicant's 35-year-old sister is married and has four children. She is a medical doctor. Her husband is a mechanical engineer and is employed by a car company as an engineer. Applicant's 31-year-old sister is also married. She has two children, and is a statistician for a telecommunications company. Her husband works for the same company. He has never served in the Sudanese military. According to the personal statement she submitted at the hearing, she calls her siblings often.³ All of her siblings wish to immigrate to the United States with their families, and have applied for the DV lottery. (GE 1, 2; AE A; Tr. 25-30, 37-40)

Applicant testified that her family lives in northern Sudan, in an area that was not affected by the recent fighting. Her family is not involved in Sudanese politics, and has never been associated with, or been questioned by, Sudanese authorities. Applicant visits Sudan often, whenever she has the time and the funds to do so. In her personal statement, she noted that she is fortunate that she is "able to keep close ties with my siblings and my immediate family by calling them often, and visiting them during my annual vacations when finances permit." She traveled to Sudan to visit her family eight times between 2002 and 2008.⁴ (GE 1; AE A; Tr. 18, 31-32, 41-42)

Applicant purchased a home in the United States in 2007. She does not own property in Sudan, or have Sudanese bank accounts or business interests. She has three bank accounts in the United States. Applicant has never voted in a Sudanese election, but has voted in U.S. elections. She also belongs to a local political club in her community, and has volunteered her help during state-wide elections. She expressed her desire to "give back to a nation (USA) I have come to love and call my own." (GE 1; AE A; Tr. 18-20, 33-34, 45, 47)

³ Applicant's statements about telephone contacts with her family are contradictory: during her security interview of January 2010, she denied talking with her parents or siblings by telephone. However, in her July 27, 2011 personal statement, she noted that she keeps "close ties with my siblings and my immediate family by calling them often..." (GE 2; AE A)

⁴ Applicant's Sudanese passport was issued in 2000 and expired in 2006. She surrendered it to her facility security officer for destruction. (GE 2; AE A)

Administrative Notice: Sudan

In 1953, the United Kingdom and Egypt concluded an agreement that provided for self-government for Sudan. After a transitional period, Sudan became independent, but the country then experienced 17 years of civil war until 1972. Civil war resumed in 1983, when soldiers mutinied. The United States declared Sudan a state sponsor of terrorism in 1993. A rebellion in the Darfur region of western Sudan in 2003 resulted in the death of tens of thousands, and an estimated two million internally displaced persons. The Sudanese Government is accused of being complicit in the bombing, murder, and rape of innocent displaced persons from Darfur. In 2004, then-Secretary of State Colin Powell stated that the government of Sudan bore responsibility for the genocide committed in Darfur. President Clinton's declaration in 1997 that Sudan presented an "unusual and extraordinary threat to the national security and foreign policy of the United States" was reaffirmed by President Bush in 2006.

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. Sudan has participated in operations against terrorism directed at U.S. interests.

Sudan has experienced recent notable changes. In January 2011, elections were held and the people of southern Sudan voted to become independent. On February 7, 2011, Secretary of State Hilary Clinton congratulated the Government of Sudan for the peaceful and orderly referendum, and Southern Sudan for completing "a critical milestone in the implementation of the Comprehensive Peace Agreement." On the same day, President Obama announced "the intention of the United States to formally recognize Southern Sudan as a sovereign, independent state in July 2011." He also called the vote "an inspiration to the world and a step toward justice and democracy." Both the President and Secretary of State noted that Sudan's designation as a state sponsor of terrorism will be reviewed and considered for withdrawal, provided Sudan meets criteria set out in U.S. law.

However, Sudan's human rights record has been poor and numerous serious abuses have occurred, including extrajudicial and other unlawful killings by government forces; and torture, beatings, rape, and other cruel and inhumane treatment by security forces. There have been arbitrary arrests and detentions; violence against women and ethnic minorities; 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. In 2011, the U.S. State Department continued to warn against travel to Sudan, and noted that the terrorist threat level in the city where Applicant's family lives remained critical. 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 if traveling in Sudan.

Policies

Each security clearance decision must be an impartial and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁶ for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.⁷ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to safeguard classified information. The “clearly consistent with the national interest” standard compels resolution of any doubt about an applicant’s suitability for access to classified information in favor of the Government.⁸

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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

⁵ Directive §6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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. The following conditions are relevant to the case:

- (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
- (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 possession of family ties to residents or citizens of a foreign country is not disqualifying under Guideline B, unless those ties create a conflict of interest or a heightened risk of foreign exploitation. The country in question must be considered. Sudan, despite recent progress, currently retains its designation as a state sponsor of terrorism. Applicant's testimony and the record evidence indicate that she has ties of affection and obligation to her family in Sudan. She visits them as often as possible. According to the Department of State, travel to Sudan by U.S. citizens requires utmost caution. Moreover, Sudan is associated with a risk of terrorism. In a Travel Warning earlier this year, the State Department noted that the terrorist threat level in the city where Applicant's family lives remain critical. Applicant's ties and contacts with her foreign family represent a heightened risk of foreign exploitation, and a potential conflict of interest between her ties to her family and the requirement to protect classified information. AG ¶ 7(a) and (b) apply.

I have also considered the mitigating conditions under Guideline B, AG ¶ 8, especially the following:

- (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.;

(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

(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 could be placed in a position that could force her to choose between U.S. and foreign interests. She is bound by strong ties of affection to her parents and siblings who are citizens and residents of Sudan, a country where human rights are violated.⁹ The government engages in unlawful killings, torture, beatings, and rape. It does not respect citizens' privacy, and engages in arbitrary arrests and detentions, and denial of due process. AG ¶ 8(a) cannot be applied.

In evaluating mitigation under AG ¶ 8(b), I considered the extent of Applicant's U.S. ties, including her ten years in the United States, her U.S. graduate studies, her two years of working for a U.S. defense contractor, and her home ownership. However, these facts must be weighed against her close relationships with foreign nationals. Her Sudanese parents and siblings, despite their wish to immigrate to the United States, remain in Sudan, with no definite timeframe for leaving. Her frequent trips to visit her foreign family demonstrate that her contacts are not casual, and that she has strong ties of affection and obligation to them. Given these ties to her foreign family, I cannot confidently conclude she would resolve a conflict of interest in favor of the United States. AG ¶ 8(b) and (c) do not apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

⁹ See ISCR Case No. 04-07766 at 3 (Ap. Bd., Sep 26, 2006) (the nature of the foreign government involved must be evaluated in foreign influence cases).

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's loyalty to the United States is not in question. She has U.S. ties through her work for the federal government, her employment with American companies, her graduate education, her home ownership, and her community involvement. However, her foreign ties place her in a position where she might have to choose between her family's interests and the interests of the United States. Applicant's foreign ties are significant, because her entire immediate family lives in Sudan. Her strong connection to them is obvious from her personal statement and her testimony. She visits them as often as her time and funds allow. These strong ties to foreign citizens raise security concerns. Although her family wishes to join her in the United States, at this point, they remain in Sudan. The political situation there has improved recently. However, the long-standing designation of state sponsor of terrorism has only recently been considered for review, and still remains in place. The U.S. State Department urges extreme caution by U.S. citizens traveling to Sudan because of terrorist activity. Applicant's ties of affection and obligation to her family in Sudan represent a heightened and unacceptable risk of foreign exploitation.

A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised under the guideline for foreign influence. Such doubts must be resolved in favor of the national security.

Formal Findings

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

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's access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge