



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



In the matter of:)
)
) ISCR Case No. 10-04503
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel

For Applicant: *Pro se*

March 25, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant has failed to mitigate the foreign influence security concerns. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) dated January 16, 2009, to request a security clearance required as part of his employment with a defense contractor (Item 4). 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 finding that it is clearly consistent with the national interest to grant Applicant's request.¹

On October 15, 2010, DOHA issued Applicant a Statement of Reasons (SOR) (Items 1, 2) that specified the basis for its decision: security concerns addressed in the

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

Directive under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG). Applicant answered the SOR allegations on November 5, 2010, and also requested a decision without a hearing (Item 3).

In his Answer to the SOR, Applicant admitted all of the allegations under Guideline B. DOHA Department Counsel forwarded to Applicant a file of relevant material (FORM)² dated January 5, 2011, in support of the Government's preliminary decision to deny Applicant's request for a security clearance. He received the FORM on February 4, 2011. He was given 30 days from the date he received the FORM to file a response. He submitted a reply dated February 5, 2011. The case was assigned to me on February 28, 2011, for a decision based on the written record.

Procedural Ruling

The Government requested I take administrative notice of certain facts relating to Sudan. The facts are summarized at pages 3 through 7 of the FORM, and supported by 12 Government reports. The reports provide elaboration and context for the summary. The facts administratively noticed are limited to matters of general knowledge not subject to reasonable dispute, and are included in the Government reports. They are set out in the Findings of Fact.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's Answer to the SOR, Government's FORM, and Applicant's Reply to the FORM, I make the following additional findings of fact.

Applicant, 55 years old, was born in Sudan. In 1989, he married a Sudanese citizen. They have three children, who are 11, 17, and 21 years of age. Applicant worked as a translator in Saudi Arabia from 1981 to 1985. He then became an ophthalmic technician from 1985 to 2000. He immigrated to the United States on a student visa in 2000.³ He spent two years studying ophthalmology at a U.S. university, and received a certificate in 2002. He worked as an ophthalmic technician from 2002 to 2008. In March 2008, Applicant became a naturalized U.S. citizen. His U.S. passport was issued the same month. In October 2008, he accepted employment with a defense contractor, where he is currently a linguist for the U.S. military. (Items 4, 6)

In late 2004, Applicant traveled to Sudan to bring his wife and children to the United States. They came in 2005. His wife did not have Sudanese government

² See Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the Government's case.

³ In 2001, Applicant requested political asylum. It was granted, but about that time, he also won the diversity visa lottery. His attorney advised him to accept the diversity visa. The record does not include information about the basis of Applicant's request for political asylum. (Item 6)

connections while in Sudan. Applicant's wife is a Sudanese citizen and a permanent U.S. resident. She is not employed outside the home. She expects to become a naturalized U.S. citizen in October 2011. Applicant's son is a Sudanese citizen and permanent U.S. resident. His other two children are naturalized U.S. citizens. All three children live in the United States. The record contains no evidence whether Applicant owns real property in the United States or in Sudan. (FORM Reply; Items 4, 5)

Applicant's mother is in her 70s, and is a citizen and resident of Sudan. She is a homemaker, and has no political affiliations or contact with the government. He last saw her in 2004 when he traveled to Sudan. In 2009, Applicant stated he contacts her once every two or three months. However, in 2010, he stated he contacts her once per year by telephone. He provides financial assistance to his mother, because of her health problems, by sending her \$500 per year. Applicant's father is deceased. Other than his mother, Applicant does not provide financial support to his family. Applicant's family knows that he is a linguist for the U.S. military. (FORM Reply; Items 5, 6)

Applicant's father-in-law and brother-in-law are citizens and residents of Sudan. His mother-in-law passed away in 2010. He talks with his father-in-law once every two or three months, and his brother-in-law once per year. (FORM Reply; Item 6)

Applicant has six brothers⁴ and two sisters who are citizen-residents of Sudan. In his 2010 response to a DOHA interrogatory, he stated that his brothers and sisters do not have military experience, political affiliations, or contacts with the Sudanese government. He described all of his brothers as farmers and both of his sisters as housewives. All of them live in the same town. He last saw them in person when he visited Sudan in 2004. Applicant stated that he did not have contact information for any of his siblings. However, he also stated that he contacts each of them about once per year, except one sister, whom he contacts twice per year. In addition, this information conflicts with his statement in 2009, that he contacts three of his brothers about every month or two. (Items 5, 6)

Although Applicant stated that none of his siblings have military experience, one of Applicant's brothers was a soldier in the Sudan People's Liberation Army from approximately 2004 to late 2009. In his security interview in January 2009, Applicant disclosed that his brother was a soldier. His brother left the army in late 2009 and returned to farming because the army was disbanded following a peace agreement between northern and southern Sudan. When Applicant completed his interrogatory response in August 2010, after his brother had returned home, he listed his brother's occupation as farmer. (FORM Reply; Items 5, 6)

In his FORM Reply, Applicant explained the apparent inconsistency about how often he contacts his siblings. In early 2009, when he had his security interview, he had

⁴ In his January 2009 security interview, Applicant stated he had seven brothers, but listed six. On his security clearance application, he listed five brothers. (Item 4; Item 6 at 10)

more frequent contact with some of his siblings because of their location, including his brother who was in the army. However, he stated,

Though out [sic] the Liberation of south Sudan my brother in question and the rest of my family had to move to different villages making it difficult for them to be able to travel long distances to use the phone booth, because it is in the main village. Since the Liberation of South Sudan my family has been able to move back to the main village again so that I able [sic] to have more contact with them.

Administrative Notice

Sudan

I take administrative notice of the following facts about Sudan, which appear in official U.S. Government publications (see Items 1 – 12).

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 from 1955 to 1972. Soldiers mutinied in 1983 and civil war resumed. 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. There has been progress, and elections were held in April 2010. However, major issues persist.

A rebellion in the Darfur region resulted in the deaths of tens of thousands of persons and has led to 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 1993, the U.S. Secretary of State designated Sudan a state sponsor of terrorism. Sudan has been involved in counterterrorism operations against U.S. interests in Sudan. However, the government still supports Hamas, and continues to be designated a state sponsor of terrorism. Sudan is under a broad U.S. embargo with extensive trade restrictions on exports. 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.

Sudan's human rights record is poor and numerous serious abuses occur, including extrajudicial and other unlawful killings by government forces; and torture, beatings, rape, and other cruel and inhumane treatment by security forces. There are 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. The U.S. State Department continues to warn against 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.

Policies

Each security clearance decision must be a fair, 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 must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either 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 for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to applicant to refute, extenuate or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁸

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).

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 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 the disqualifying conditions, and find that the following are relevant:

- (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; and
- (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.

The mere possession of close family ties with a resident or citizen of 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 frequent, non-casual 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.⁹

The country in question also must be considered. In particular, the nature of its government, its relationship with the United States, and its human rights record are

⁹ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. Sudan is a designated state sponsor of terrorism, and terrorists are known to operate there. It has a poor human rights record, engages in arbitrary arrests, and violates citizens' privacy.

Applicant has ties of affection and obligation with his foreign family. He shares living quarters with his wife, who is a Sudanese citizen. He stays in touch with his mother, siblings, and in-laws in Sudan. He sends his mother money to help with her medical expenses. His relationship with his foreign family members creates a heightened risk of exploitation or coercion. Moreover, Applicant's ties of affection and obligation to his foreign family create a potential conflict of interest between his desire to protect them, if they were threatened or coerced by Sudanese authorities or terrorists, and the obligation he would have to protect classified information, were he to hold a security clearance. AG ¶ 7(a), (b), and (d) apply.

I have 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 is bound by ties of affection and/or obligation to his mother, brothers, sisters, father-in-law and brother-in-law, citizens of a country that allows terrorist groups to operate within its borders, and violates the human and civil rights of its citizens. In light of such facts, Applicant could be placed in a position that could force him to choose between U.S. and foreign interests. AG ¶ 8(a) cannot be applied.

In evaluating mitigation under AG ¶ 8(b), I considered Applicant's ties to the United States, including his 11 years living here, his three years of U.S. citizenship, and his service to the U.S. government through employment with a defense contractor. However, Applicant's foreign ties must be evaluated as well. Applicant was born and raised in Sudan. He came to the United States when he was a mature man of

approximately 44 years of age. Other than his wife and children, Applicant has a large immediate family that continues to reside in Sudan. His has strong ties to his mother, demonstrated not only by his contacts with her, but by the fact that he sends her funds to help with her health expenses each year. I cannot confidently conclude, based on these facts, that Applicant would resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) does not apply.

Mitigation under AG ¶ 8(c) is also unavailable. Relationships with immediate family members are presumed to be close, unless the evidence demonstrates otherwise. Applicant is bound by ties of affection to his foreign family. He stays in touch with his family in Sudan as frequently as their situation allows. When they were not living in proximity to a telephone, he spoke with them once per year. But when they were in a location that allowed more frequent contact, he took the opportunity to do so, speaking with some of them every month or two. Given the nature of Applicant's family ties, the risk of foreign influence cannot be ruled out.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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

Applicant has been a U.S. citizen for three years, and has provided service to the Government through his work with a defense contractor. However, numerous facts weigh against granting him a security clearance, including his ongoing relationships with his brother, sisters, and in-laws, and his close relationship with his mother, all Sudanese citizens. Concerns remain under Guideline B because of these ties to Sudan, a country that poses a heightened risk of exploitation. I conclude Applicant has not mitigated the Foreign Influence security concerns.

Overall, the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the Government.¹⁰

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline B: AGAINST Applicant

Subparagraphs 1.a. – 1.f. Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge