



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-05937

Appearances

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

October 11, 2011

Decision

HOWE, Philip S., Administrative Judge:

On March 30, 2009, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On March 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant received the SOR on March 14, 2011. Applicant answered the SOR in writing on April 4, 2011. Applicant requested his case be decided on the written record in lieu of a hearing.

On June 7, 2011, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on June 9, 2011. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on June 20, 2011. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on July 20, 2011. I received the case assignment on September 13, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Sudan. (FORM) The request and the attached documents were admitted into evidence. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted all the allegations in the SOR. (Item 4) His admissions are incorporated herein and accepted as factual findings.

Applicant is 27 years old, unmarried, and works for a defense contractor as an electrical contractor. He was born and raised in the Sudan. He became a United States citizen on October 16, 2002. Applicant obtained his U.S. passport in 2004. He is a dual citizen with the Sudan. Applicant does not want to renounce his Sudanese citizenship because it is his country of birth and he may want to return there to live. Applicant told the government investigator in May 2009 that he would not renounce his Sudanese citizenship even to obtain a security clearance. Applicant stated he was loyal equally to the United States and the Sudan. (Items 4-7)

Applicant traveled to the Sudan in May 2005 for a visit lasting 50 days. While there he resided with an aunt. In July 2006 he traveled again to the Sudan for a 40-day stay and stayed with another aunt. Applicant traveled for a third time to the Sudan in December 2008 for 45 days and resided with his aunts again. He has not traveled to the Sudan since 2008. (Items 4-7)

Applicant has daily, weekly, or monthly personal or telephone contact with his parents, siblings, and other relatives in and outside of the Sudan before and after he immigrated to the United States. (Items 4-7)

Applicant has an aunt who lives in the Sudan and is a citizen of that country. She works for the Women's Rights Ministry of the Sudanese government. Another aunt is a

citizen and resident of the Sudan. She works for the United Nations in the Sudan. (Items 4-7)

Applicant's father came to the United States in the 1960's to obtain a college degree. He returned to the Sudan when he finished his degree. Applicant's father returned to the United States in 1985. He became a U.S. citizen in 1985. His father then sponsored Applicant to move to the United States in 2001 when he was 17 years old. Applicant had a Sudanese passport when he came to the United States. It has now expired and his father kept it for the past decade. Applicant would be willing to surrender it. (Item 6)

I take administrative notice of the following facts pertaining to the Sudan. The Sudan is a country on the eastern side of Africa, south of Egypt. It was once part of the British Empire and gained its independence in 1956. The northern and southern sections of the country are split ethnically and religiously. The northern part is inhabited by persons of Arab lineage and is Muslim. The southern part of the Sudan is mainly Christian or other religions.

These two portions of the Sudan have been engaged in a civil war from 1956 to the present. In January 2005 the two warring factions signed a cease-fire agreement that also provided for a vote on future status for the southern portion of the Sudan. The United Nations supported this resolution of the civil war. In the Darfur region of the Sudan a rebellion erupted in 2003. The Sudanese government provided weapons and support to local tribes and militia. Many thousands of persons died in that conflict.

The United States, under both the Clinton and Bush administrations, determined the ongoing conflict in the Sudan was a threat to peace and security in the area and to the United States. Two executive orders signed by both Presidents Clinton and Bush prohibited transactions with the Sudan.

In January 2011 a referendum in the southern portion of the country voted to separate from the Sudan and form a new country. The United States recognized the new country in July 2011. Since 1993 the Sudan has been designated by the U.S. State Department as a state sponsor of terrorism.

There is a history of human rights violations in the Sudan, including torture and other forms of abuse. The Sudanese Government monitors the internet and reads email messages sent to and from the Sudan.

In January 2008 two U.S. Embassy employees were murdered in Khartoum, the capital, by men in alliance with al-Qaida, the international terrorist organization. The attackers were arrested, convicted and sentenced to death in the Sudan. They later escaped from custody. In May 2010 a U.S. citizen employed by a humanitarian organization operating in Darfur was held for several months until being released.

The U.S. State Department warns U.S. citizens of the risks of travel in the Sudan, particularly in Darfur. Anti-western sentiment is wide-spread in the country. Terrorists operate in the Sudan and the threat remains critical. (U.S. State Department background notes of 2008 to 2011; Executive Orders 13067 and 13412; Congressional Research Service report on the Sudan dated December 16, 2010; The White House Press Office statement of February 7, 2011 on the intent to recognize Southern Sudan) (Source documents)

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of

classified information. See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes nine conditions that could raise a security concern and may be disqualifying. The following two disqualifying conditions are applicable to this 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.

Applicant has strong connections with his family in and from the Sudan, a country that has active terrorists operating within it, a civil war of long duration between the northern and southern parts of the country, and is the subject of international concern about the refugees and massacres in the Darfur region. Applicant has weekly to monthly telephone contact with his parents, siblings, and other relatives. These connections create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, particularly because of Applicant's stated intention to return to the Sudan in the future and live there.

AG ¶ 8 provides six conditions that could mitigate security concerns.

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

None of the mitigating conditions are applicable because of Applicant's strong immediate family connections, his strong attachment to his aunts in the Sudan, and his own connection to the country of his birth. He told the government investigator he would not renounce his dual citizenship because he might want to return to the Sudan later in life to live there. Applicant placed his loyalty to both countries on an equal basis. Applicant has returned to the Sudan three times between 2005 and 2008 for extensive visits. There is nothing to indicate he will not return again in the future, particularly after he stated he might go to the Sudan to live at some time in the future.

In particular, the following two mitigating conditions would not apply and strengthen the concern about him. Applicant's relationship with his family living in the Sudan is close. Terrorism remains a concern. Applicant could be placed in a position of having to choose between his family's interests and the interests of the United States. This concern is heightened because Applicant intends to return to live in the Sudan. AG ¶ 8 (a) does not apply.

Applicant has a conflict of interest between his loyalty to family and his loyalty to the United States. He has only been in the United States for 10 years, compared to 17 years in Sudan. He has not established significant financial and personal connections to the United States to balance his strong connections to the Sudan. Applicant also has close familial connections to his numerous relatives in the Sudan, speaking with them frequently. It is not clear that Applicant will resolve any conflict of interest in favor of the United States. AG ¶ 8 (b) would not apply.

The Directive clearly states any doubt in security clearance cases must be resolved in favor of national security. I have great doubts about Applicant based on his statements to the government investigator. These comments strengthen the doubt about him under AG ¶ 2(b) and it clearly applies here.

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 relevant 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 facts and circumstances surrounding this case. Applicant is an adult. He lives in the United States but does not exhibit a strong and overwhelming connection to this country. His comments about his equal attachment to the Sudan and the United States raise a great potential for pressure, coercion, exploitation, or duress caused by his attachments to the Sudan, which has a history of terrorism, civil war of long duration, and continuous civil and human rights violations.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Foreign Influence. I conclude the "whole-person" concept against Applicant.

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:

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| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraph 1.a to 1.g: | 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge