DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: Bradley P. Moss, Esquire

05/31/2012

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On May 21, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).[1] On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories. She responded to the interrogatories on August 12, 2011.[2] DOHA issued a Statement of Reasons (SOR) to her on January 5, 2012,[3] pursuant to Executive Order 10865, *Safeguarding Classified*

[1] Government Exhibit 1 (SF 86, dated May 21, 2009).

[2] Government Exhibit 3 (Applicant's Answers to Interrogatories, dated August 12, 2011).

[3] The SOR was inadvertently dated January 5, 2011. The error was identified and rectified, and Department Counsel's motion to amend the SOR by deleting the year "2011" and substituting the year "2012", was granted without objection. *See* Transcript (Tr.) at 9.

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 the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines B (Foreign Influence) and E (Personal Conduct), and detailed reasons why DOHA was unable to find 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 acknowledged receipt of the SOR on January 14, 2012. In a sworn statement, dated February 3, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on March 13, 2012, and the case was assigned to me on March 16, 2012. A Notice of Hearing was issued on March 21, 2012, and I convened the hearing, as scheduled, on April 17, 2012.

During the hearing, five Government exhibits (GE 1 through 5) and five Applicant exhibits (AE A through E) were admitted into evidence without objection. Applicant and two witnesses testified. The Tr. was received on April 25, 2012.

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,[4] U.S. Department of State,[5] and the Congressional Research Service.[6]

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[4] 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.

[5] U.S. Department of State, *Country Specific Information: Sudan*, dated November 10, 2011; Bureau of African Affairs, *Background Note: Sudan*, dated January 10, 2012; U.S. Department of State, Office of the Coordinator for Counterterrorism, *State Sponsors of Terrorism*, dated August 18, 2011; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2010 Human Rights Report: Sudan*, dated April 8, 2011; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Sudan*, dated January 11, 2012; 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.

[6] Congressional Research Service, Report for Congress, *Sudan: The Crisis in Darfur and Status of the North-South Peace Agreement*, dated June 15, 2011.

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,[7] as set forth below under the Sudan subsection.

During the hearing, Department Counsel moved to amend the SOR to conform to the evidence. He sought to amend SOR ¶ 1.c. by deleting the word "China" and substituting the word "Taiwan." There being no objection, the motion was granted.

Findings of Fact

In her Answer to the SOR, Applicant admitted, with explanations, nearly all of the factual allegations pertaining to foreign influence (¶¶ 1.a. through 1.i.) of the SOR, as well as the factual allegation pertaining to personal conduct (¶ 2.a.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. She denied the remaining allegation (¶ 1.j.) or portions of other allegations (portions of ¶ 1.a. and 1.d.) of the SOR. 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 38-year-old employee of a defense contractor who, since December 2008, has served as a deputy recruiting manager, logistic processing manager, and office manager.[8] She has never served with the U.S. military.[9] She was granted a U.S. secret security clearance in 2004.[10]

Foreign Influence

Applicant was born in Sudan to Sudanese-born citizen-residents.[11] Applicant's father, an officer of the Sudanese military who was forced to retire,[12] sought political asylum in the United States,[13] and immigrated here in 1990.[14] Applicant completed her

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[7] 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).

[8] Government Exhibit 1, *supra* note 1, at 19; Tr. at 60.

[9] Government Exhibit 1, *supra* note 1, at 35.

[10] Government Exhibit 1, *supra* note 1, at 75-76.

[11] Government Exhibit 1, *supra* note 1, at 40-41; Tr. at 58.

[12] Government Exhibit 2 (Affidavit, dated December 14, 2010), at 4.

[13] Government Exhibit 2, *supra* note 12, at 4.

[14] Applicant's Answer to the SOR, dated February 3, 2012, at 2.

primary schooling in Sudan, and immigrated to the United States with her mother as refugees in 1994.[15] She was 20 years of age.[16] Applicant enrolled in a community college in September 1996, and received her associate's degree in cardiovascular technology in May 2005.[17] Applicant became a naturalized U.S. citizen in July 2002.[18] When Applicant became a naturalized U.S. citizen, she took an oath of allegiance to the United States. That oath included the words:[19]

> 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 has worked for a variety of employers, both part-time and full-time since the time she was in college. She was a part-time sales associate from September 1998 until December 1999 (when her employer went out of business); a part-time sales associate from December 1999 until June 2000; a cardiovascular technician from July 2000 until April 2003; a linguist in Iraq from May 2003 until April 2004; a part-time limousine driver from December 2004 until February 2005; a linguist from February 2005 until March 2005; a part-time limousine driver from March 2005 until June 2005; a linguist in Iraq from June 2005 until December 2005; a recruiter, deputy director of recruiting, director of recruiting, and project administrator from December 2005 until December 2008.[20] She joined her current employer in December 2008.[21]

Applicant was married in August 2000.[22] She and her husband, a naturalized U.S. citizen who was also born in Sudan,[23] have two children, born in the United States in September 2004, and May 2008.[24] The family resides together in the United States.[25]

Both of Applicant's parents are naturalized U.S. citizens residing in the United States.[26] Applicant has two brothers and one sister, all of whom reside in the United

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[15] Tr. at 59.

[16] Tr. at 59.

[17] Government Exhibit 1, *supra* note 1, at 17-18; Tr. at 59.

[18] Government Exhibit 1, *supra* note 1, at 7-8.

[19] 8 C.F.R. § 337.1(a) (1995).

[20] Government Exhibit 1, *supra* note 1, at 20-33.

[21] Government Exhibit 1, *supra* note 1, at 19-20; Tr. at 59-60.

[22] Government Exhibit 1, *supra* note 1, at 38.

[23] Government Exhibit 1, *supra* note 1, at 38.

[24] Government Exhibit 1, *supra* note 1, at 41-42.

[25] Government Exhibit 1, *supra* note 1, at 38, 41-42.

[26] Government Exhibit 1, *supra* note 1, at 40-41; Applicant's Answer to the SOR, *supra* note 12, at 2.

States.[27] A third brother, a student, was murdered in the United States.[28] Her sister and one brother are naturalized U.S. citizens, and her other surviving brother is still a Sudanese citizen.[29] In addition to her immediate family, Applicant also has several aunts and an uncle. One aunt and uncle are citizens of Sudan, but are legal permanent residents of the United States.[30] Three aunts are Sudanese citizens who still reside in Sudan.[31] One is a retired professor, and the other two are homemakers.[32]

Other members of Applicant's more extended family are: her father-in-law, a retired social worker,[33] and her stepmother-in-law, also a retired social worker,[34] are both Sudanese citizens who still reside in Sudan;[35] her mother-in-law is a naturalized U.S. citizen who works and resides in the United Arab Emirates (UAE);[36] her three sisters-in-law are Sudanese citizens who still reside in Sudan, where one is a homemaker, one is a student, and one is unemployed;[37] and her three brothers-in-law are Sudanese citizens, with two working in banking and residing in UAE, and one is a businessman residing in the United States with Applicant's sister.[38] One of her brothers-in-law in the UAE was recently granted legal permanent U.S. residency status, and expects to relocate here in the near future.[39] Other than the military service of Applicant's father, none of her immediate family or extended family members have ever been affiliated with the Sudanese or any other foreign government or intelligence service.[40]

Applicant's method and frequency of contact with her family members and extended family members, especially those still residing outside of the United States, is varied. Applicant has not seen those family members or extended family members still residing in Sudan since August 2007, and generally speaks with them by telephone on

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[27] Government Exhibit 1, *supra* note 1, at 43-46; Government Exhibit 2, *supra* note 12, at 4-5.

[28] Government Exhibit 2, *supra* note 12, at 5.

[29] Government Exhibit 1, *supra* note 1, at 43-46; Applicant's Answer to the SOR, *supra* note 12, at 2.

[30] Applicant's Answer to the SOR, *supra* note 12, at 5; Government Exhibit 2, *supra* note 12, at 6.

[31] Applicant's Answer to the SOR, *supra* note 12, at 5-6; Government Exhibit 2, *supra* note 12, at 7-9.

[32] Government Exhibit 2, *supra* note 12, at 7-9.

[33] Government Exhibit 2, *supra* note 12, at 5.

[34] Applicant's Answer to the SOR, supra note 12, at 3.

[35] Applicant's Answer to the SOR, *supra* note 12, at 3.

[36] Applicant's Answer to the SOR, *supra* note 12, at 4.

[37] Government Exhibit 2, *supra* note 12, at 7-8.

[38] Government Exhibit 2, *supra* note 12, at 7-9.

[39] Applicant's Answer to the SOR, *supra* note 12, at 7.

[40] Government Exhibit 2, *supra* note 12, at 3-9; Applicant's Answer to the SOR, *supra* note 12, at 2-7.

one or two, or as many as four, occasions each year.[41] As for those family members residing in UAE, she has not seen her mother-in-law since July or November 2010 when her mother-in-law visited Applicant and her husband in the United States, and generally speaks with her by telephone on a weekly basis and has e-mail exchanges on two to three occasions per month.[42] One of her brothers-in-law, who will relocate to the United States, visits the family in the United States on a quarterly basis.[43] Applicant has not seen her other brother-in-law since August 2007.[44] Applicant speaks with each of those brothers-in-law maybe once every three months.[45]

Applicant's father has a friend in the United States who is naturalized U.S. citizen (formerly a citizen of Sudan) who is also affiliated with the Sudanese Government.[46] Applicant first met the individual in 1994 and has seen that individual on infrequent social occasions over the ensuing years.[47] Applicant's most recent contacts with the individual were in 2009 and 2011, at social functions.[48] Applicant knows several individuals from her childhood who have remained in Sudan. While they were friends at that time, she no longer maintains close contact with them, and has not seen her friends since August 2007.[49] She may, on an annual holiday occasion, speak with them and wish them well.[50]

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)

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[41] Government Exhibit 2, *supra* note 12, at 5-9; Applicant's Answer to the SOR, *supra* note 12, at 3-6.

[42] Government Exhibit 2, *supra* note 12, at 5; Applicant's Answer to the SOR, *supra* note 12, at 4.

[43] Government Exhibit 2, *supra* note 12, at 7.

[44] Government Exhibit 2, *supra* note 12, at 8.

[45] Applicant's Answer to the SOR, *supra* note 12, at 7.

[46] Government Exhibit 3, *supra* note 2, at 4-6; Applicant's Answer to the SOR, *supra* note 12, at 8.

[47] Government Exhibit 3, *supra* note 2, at 4-6; Applicant's Answer to the SOR, *supra* note 12, at 8.

[48] Government Exhibit 3, *supra* note 2, at 4-6; Applicant's Answer to the SOR, *supra* note 12, at 8.

[49] Applicant's Answer to the SOR, *supra* note 12, at 8.

[50] Applicant's Answer to the SOR, *supra* note 12, at 8.

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, 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.

Personal Conduct

When Applicant was employed as a recruiter, deputy director of recruiting, director of recruiting, and project administrator from December 2005 until December 2008, she was initially permitted to use her personal home computer for work, but she was subsequently provided with a company laptop to work at home. Company proprietary information was stored in her home computer and later uploaded to the laptop to facilitate her work.[51] Applicant objected to her "unhealthy and uncomfortable" work environment at the office that was "demeaning and intolerable," and experienced work-related stress.[52] Largely because of her frustrations with the job, on December 15, 2008, she submitted her resignation, without advanced notice, to be effective immediately.[53] However, before she did so, because of anger towards her management, and because she thought they could be useful at her new job, she sent herself some e-mails to her home computer which included three proprietary documents: a hire right consent form, a new personnel hire data form, and a candidate check list, all of which she considered to be harmless blank templates.[54] The materials were never subsequently accessed by Applicant and simply remained in her inbox, unopened.[55] As part of being out processed, Applicant signed an employee release stating she had returned all employer property, equipment, and documents.[56]

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[51] Applicant's Answer to the SOR, *supra* note 12, at 9; Government Exhibit 4 (Affidavit, dated March 26, 2010), at 2.

[52] Applicant's Answer to the SOR, *supra* note 12, at 10.

[53] Government Exhibit 4, *supra* note 51, at 2.

[54] Applicant's Answer to the SOR, *supra* note 12, at 10; Government Exhibit 4, *supra* note 51, at 2; Applicant Exhibit B (Affidavit, dated February 27, 2009), at 2.

[55] Applicant's Answer to the SOR, *supra* note 12, at 10; Government Exhibit 4, *supra* note 51, at 2.

[56] Government Exhibit 4, *supra* note 51, at 2.

Applicant commenced her new job with her current employer the following day. During her second week on the job, she created a list of 85 possible candidates who were linguists. The names were taken from proprietary information that was still in her home computer.[57] In early January 2009, Applicant was sued by her former employer, seeking monetary and injunctive relief, accusing her of breach of contract, breach of duty of loyalty, breach of duty to maintain confidentiality of employer information, misappropriation of trade secrets, and injunctive relief.[58] When she learned of the lawsuit, Applicant deleted all the employer propriety information from her home computer.[59] The matter was settled out of court with no money changing hands, and an Order of Nonsuit was issued in June 2009.[60] The list of possible linguist candidates she had created was destroyed.[61] Applicant acknowledged that her actions were a major mistake and were wrong. She intends to never take similar actions in the future.[62]

Character References

Applicant's former immediate supervisors, a colleague, her facility security officer, and her husband, all support the restoration of her security clearance. They have characterized her in highly favorable terms, and attest to her trustworthiness, professionalism, dedication to her job, very high work ethics, and honesty. They also agree that her actions pertaining to the propriety information was a mistake and out of character for her.[63]

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."[64] 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

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[57] Government Exhibit 4, *supra* note 51, at 2.

[58] Government Exhibit 4, *supra* note 51, at 3.

[59] Government Exhibit 4, *supra* note 51, at 3.

[60] Government Exhibit 4, *supra* note 51, at 3; Applicant Exhibit A (Order of Nonsuit, dated June 2, 2009); Applicant's Answer to the SOR, *supra* note 12, at 12.

[61] Government Exhibit 4, *supra* note 51, at 3.

[62] Applicant's Answer to the SOR, *supra* note 12, at 12; Government Exhibit 4, *supra* note 51, at 3-4.

[63] Applicant Exhibit D (Character reference, dated April 9, 2012); Applicant Exhibit C (Character reference, dated April 9, 2012); Applicant Exhibit E (Character reference, dated April 12, 2012); Tr. at 34-35, 55-56.

[64] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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."[65]

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."[66] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and 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 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.[67]

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."[68]

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[65] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

[66] "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 (4th Cir. 1994).

[67] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[68] *Egan*, 484 U.S. at 531

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."[69] 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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.[70] Applicant's varied relationships with her three aunts, her father-in-law, her stepmother-in-law, and her three sisters-in-law, all of whom are Sudanese citizens who still reside in Sudan; as well as her varied relationships with her two brothers-in-law who are Sudanese citizens residing in the UAE, and her mother-in-law who is a U.S. citizen residing in the UAE, are current security concerns for the Government. In addition, the Government remains concerned about family members who are Sudanese citizens who reside in the United States.

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[69] *See* Exec. Or. 10865 § 7.

[70] *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).

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 her family members and other acquaintances who are Sudanese citizen-residents, as well as U.S. citizens who reside elsewhere, 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 relationships with her immediate family members, all of whom reside in the United States, either as U.S. citizens or as Sudanese citizens and permanent U.S. residents, are of minimal security significance. Her other family members, including her mother-in-law who is a U.S. citizen working in the UAE, and two brothers-in-law who work in the UAE, with one soon to relocate to the United States, are of little security significance as the Government has not presented evidence that their residence in the UAE creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. This leaves the focus on Applicant's other extended family members: the father-in-law, the stepmother-in-law, the three aunts, and the three sisters-in-law, and on her acquaintances both in Sudan and in the United States.

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.[71] 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."[72]

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 her family members and acquaintances, 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 family members are, or have been, political activists, challenging the policies of the Sudanese government; that terrorists have approached or threatened Applicant or her family members; that the Sudanese government has approached Applicant; or that her 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 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 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 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.[73]

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[71] *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).

[72] ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

[73] *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).

However, the significance of the heightened risk is minimized by several factors. On two separate occasions, Applicant was willing to risk her life as part of her duties on behalf of the U.S. combat forces in Iraq. She was fully aware of those risks. 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 her.[74] Applicant has deep and longstanding relationships and loyalties in the U.S. Her husband and children, as well as to Applicant's parents and surviving siblings, and other family members are U.S. citizens or residents of the United States. She can be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶¶ 8(a) and 8(b) apply, and AG ¶ 8(c) partially applies, especially to the friend of Applicant's father, and Applicant's friends from her childhood who have remained in Sudan. Even if AG ¶ 8(b) does not fully apply, the security concerns are mitigated under the whole-person analysis below.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. If there is:

> *credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:*
>
> *(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent, or other inappropriate behavior in the workplace; (3) a pattern of dishonesty or rule violations; (4) evidence of significant misuse of Government or other employer's time or resources,*

[74] See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

security concerns may be raised under AG ¶ 16(d).

Under AG ¶ 16(e), "*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . . . ,*" may raise security concerns. Similarly, under AG ¶ 16(f), a "*violation of a written or recorded commitment made by the individual to the employer as a condition of employment*," is potentially disqualifying.

As to AG ¶¶ 16(d), 16(e), and 16(f), the sole focus of those potentially disqualifying conditions is the incident pertaining to Applicant's December 2008 actions in sending herself some e-mails to her home computer which included three proprietary documents, all of which she considered to be harmless blank templates. As part of being out processed, Applicant signed an employee release stating she had returned all employer property, equipment, and documents, but she had not. During her second week on her new job, she created a list of 85 possible linguist-candidates taken from proprietary information that was still in her home computer. In early January 2009, Applicant was sued by her former employer, seeking monetary and injunctive relief, accusing her of breach of contract, breach of duty of loyalty, breach of duty to maintain confidentiality of employer information, misappropriation of trade secrets, and injunctive relief. AG ¶¶ 16(d), 16(e), and 16(f), have been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from personal conduct. If "*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*," AG ¶ 17(c) may apply. Also, AG ¶ 17(d) may apply if "*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*." Similarly, if "*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*," AG ¶ 17(e) may apply.

When she learned of the lawsuit, Applicant deleted all the employer proprietary information from her home computer. The matter was settled out of court with no money changing hands, and an Order of Nonsuit was issued in June 2009. The list of possible linguist candidates she had created was destroyed. Applicant acknowledged that her actions were a major mistake and were wrong. She intends to never repeat such actions in the future. The incident in question occurred only once – while she was in a stressful situation in December 2008 – three and one-half years ago. There has been no recurrence of similar conduct, and it is unlikely to recur, as she has relocated to a much more favorable work environment. Except for that one incident of aberrant behavior, there is little doubt cast on Applicant's reliability, trustworthiness, or good judgment. Several character references, including those who knew Applicant before, during, and after the incident, concur in an assessment that Applicant is trustworthy and

exhibits the highest standards of ethical conduct and moral character. AG ¶¶ 17(c), 17(d), and 17(e) all apply.

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[75]

There is some evidence against mitigating Applicant's situation. Sudan is a state sponsor of terrorism that is widely known for significant human rights abuses. With three aunts, a father-in-law, stepmother-in-law, three sisters-in-law, and an acquaintance, all of whom are Sudanese citizens who still reside in Sudan, there is a potential risk that Sudan would forcefully attempt to coerce Applicant through those individuals. In addition, there was Applicant's December 2008 action related to the proprietary information she had wrongfully retained and used. (*See* AG ¶ 2(a)(8).)

The mitigating evidence under the whole-person concept is more substantial. While Sudan is a state sponsor of terrorism, it is not believed to be an active collector of U.S. economic intelligence and proprietary information, and there is no evidence that Sudan uses coercive measures to gain access to such information. It is apparent that Sudan's self-interest is simply remaining in power. It is very unlikely Sudan would forcefully attempt to coerce Applicant through her extended family members and her acquaintance still residing in Sudan. The presence of those extended family members and the acquaintance in Sudan without any affiliation or relationship to the Government of Sudan does not generate a realistic potential for exploitation. As for those family members residing in the UAE or the United States, the likelihood of Sudanese efforts against them is even more remote.

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[75] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Since Applicant first received a security clearance in 2004, the foreign influence issues have largely improved in her favor, with more family members moving out of Sudan and becoming U.S. citizens or residents. There is decreased evidence of a "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion. As for the personal conduct issue, that one incident of aberrant behavior took place three and one-half years ago, and there has been no recurrence of similar conduct. It is unlikely to recur. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).[76]

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
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

[76] Although I had previously requested briefs pertaining to the applicability of Department of Defense Manual 5220.22-M, *National Industrial Security Program Operating Manual (NISPOM)*, (February 2006) §2-204, under the circumstances herein, a decision on its applicability is not being made.

Conclusion

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

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ROBERT ROBINSON GALES
Administrative Judge