



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-14372
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2013

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. His wife, parents, and siblings are citizens and residents of the Republic of Sudan. The foreign influence security concerns are favorably resolved. Clearance is granted.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on October 10, 2012, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On October 18, 2012, Applicant answered the SOR and requested a hearing. On November 27, 2012, I was assigned the case. On November 28, 2012, the

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing convened on December 5, 2012.<sup>2</sup> I admitted Government's Exhibits (Ex) 1 through 4, without objection. Applicant testified on his own behalf as did five other witnesses. On December 5, 2012, DOHA received the hearing transcript (Tr.).

### **Procedural Rulings**

Department Counsel requested administrative notice of facts concerning the Republic of Sudan (Sudan) and provided supporting documents to show detail and context for those facts. Applicant agreed to the administrative notice request and the 12 documents were admitted as Hearing Exhibits (HE) I through XII.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See 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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). 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 15 types of facts for administrative notice. See the Sudan section of the Findings of Fact of this decision, *infra*, for the facts accepted by administrative notice.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admits his wife, parents, siblings, and mother-in-law are citizens and residents of the Sudan. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 50-year-old physicist who has worked for a defense contractor since November 1999. (Tr. 21) He has two children ages, eight and eleven, who are both U.S. citizens having been born in the United States. (Tr. 21) His manager, who has known Applicant for the past eight years and sees him on a daily basis, states Applicant takes operational security seriously and is very trustworthy. (Ex. A, Tr. 49, 51) His manager states Applicant's two daughters "are his whole world and what he lives for . . . they mean the world to him." (Ex. A) He stated Applicant is an American who loves his country and his daughters and would defend both vigorously, because he considers them one in the same. (Ex. A) His manager believes that any scenario placing Applicant in a situation where he would have to choose between the safety and well-being of his daughters and relatives in the Sudan, his daughters would always win. (Ex. A)

Applicant's direct supervisor states he is impressed with Applicant's drive, determination, and devotion to his two daughters. (Ex. B) Applicant has made his daughters' welfare a priority. (Ex. B) Applicant's neighbor, a retired U.S. Army colonel, stated Applicant is a loyal citizen and good neighbor. (Ex. C) Applicant's best friend

---

<sup>2</sup> At the hearing, Applicant stated he did not need any additional time to prepare for the hearing. (Tr. 14)

trusts Applicant to the extent he allows his 18-year-old daughter to live with Applicant while she is attending college. (Tr. 30, 31, 44) He believes Applicant to be trustworthy and loyal. (Tr. 30) His friend believes the most important thing in Applicant's life is his daughters. (Tr. 34) Applicant is a good person and a good father. (Tr. 46)

Applicant was born and grew up in the Sudan. In 1985, he attended school at a Turkish university, where he studied electrical engineering. (Ex. 3, Tr. 59) While studying there, he decided to apply for school in the United States. (Ex. 3) In 1989, he came to the United States. (Ex. 3) In 1996, he obtained his Bachelor of Arts degree in physics and electrical engineering and master's degrees in physics from colleges in the United States. (Ex. 1, 3, Tr. 59) From September 1993 to September 1996, he was a physics tutor at a U.S. college. From September 1996 to September 1998, he was a high school science teacher. From September 1998 to September 1999, he was an adjunct lecturer at a U.S. college. In January 1999, he became a naturalized U.S. citizen. (Ex. 1, 3) For a period of time in 1999, while waiting responses from the resumes he had sent out, he was employed installing carpet and flooring. (Ex. 3) In November 1999, he obtained his current position as a test analyst for a DoD contractor. (Ex. 3)

Applicant has never considered himself a dual citizen. (Ex. 3) His allegiance is to the United States. (Ex. 3) He states his life has been built, established, formulated, and rooted in the United States. (Tr. 21) Other than the birth of his children, the day he became a U.S. citizen was the happiest day of his life. (Tr. 71) He has no loyalty to any other nation. (Tr. 22) He is seriously attached to his two children. His life is in the United States and not in the Sudan. His life is not overseas. (Tr. 24) He has never thought about returning permanently to live in the Sudan. (Tr. 65)

In July and August 1997, July and August 2009, and July and August 2010, Applicant visited his family in the Sudan. On visits back to the Sudan, he does not feel he belongs there. (Tr. 66) His most recent visit was for the purpose of getting married. In July 2010, he married his current wife in the Sudan, which was the last time he was in the Sudan. (Ex. 2, Tr. 67) His sister introduced him to her, and he being a single father raising two children, thought it would be a good idea to meet her. (Tr. 54) His wife stayed in the United States for six months before returning to the Sudan. (Tr. 23) The adjustment to the United States and to Applicant's family was a struggle. (Tr. 23) He has not had contact with her since shortly after her return to the Sudan when he received an e-mail from her stating she was going to Saudi Arabia seeking employment. (Tr. 24, 69) The marriage is over and he is attempting to find a way to dissolve the marriage without having to return to the Sudan. (Tr. 25) He has no contact with his mother-in-law. Having to choose between his new wife and his daughters, he would choose his daughters. (Tr. 55)

Applicant's father, in his eighties, his mother, in her seventies, two brothers, and eight sisters are citizens and residents of the Sudan. (Tr. 60) None of his family members are members of or associated with the Sudan Government. (Ex. 3) He has contact by telephone or by Skype with his parents ever month or every other month. (Tr.

60) Before retiring, his father owned a shop selling food and drink. His mother was a housewife. (Tr. 61) One brother is an electrician and the other an accountant. (Tr. 61) He talks to his brothers on holidays and maybe every three or four months. (Tr. 61)

Applicant has eight sisters living in the Sudan. One does computer work and printing. (Tr. 62) One is a substitute teacher, and another is married to a vegetable and fruit seller. He is unsure what his other sisters or what their husbands do. (Tr. 63) He talks to them two or three times a year on holidays if they happen to be at his parents' home when he calls. (Tr. 63) One sister lives next door to his parents. (Tr. 64)

Between 1993 and 1999, Applicant sent money to his family in the Sudan. (Ex. 3) He sent them \$400 to \$500 on occasion for holiday celebrations or home repairs. He sent his cousin \$4,000 for his cousin's back surgery. (Ex. 3) Applicant owns a home in the United States. His bank accounts are in the United States. He has no assets outside of the United States. (Tr. 70)

## **Sudan**

On January 1, 1956, Sudan achieved independence under a provisional constitution. The Sudan has been at war with itself for more than three-quarters of its existence.<sup>3</sup> A mutiny of army officers led to seventeen years of civil war (1955-1972). A peace agreement was reached in 1972, but civil war began again in January 1983 when soldiers mutinied. Through the 1990s, there were a series of regional efforts to bring the Sudanese civil war to an end. By mid-2001, prospects for peace in Sudan appeared to be remote. On January 9, 2005, a Comprehensive Peace Agreement was signed, establishing a new Government of National Unity and the interim Government of Southern Sudan. A six-year interim period was stipulated to allow implementation of the Comprehensive Peace Agreement and elections at all levels. Although some progress was achieved, meaningful implementation of key provisions of the Comprehensive Peace Agreement has faltered.

The citizens of the Sudan have deep cultural and religious differences. Northerners, who have traditionally controlled the country, have sought to unify it along the lines of Arabism and Islam despite the opposition of non-Muslims, southerners and marginalized peoples in the west and east.<sup>4</sup>

A rebellion in Darfur has resulted in the deaths of tens of thousands of persons, and has led to an estimated 2 million internally displaced persons in Sudan and 250,000 refugees in neighboring Chad. The Sudanese Government is complicit in the bombing, murder, and rape of innocent civilians in Darfur. The Sudanese President has demonstrated a continued refusal to honor his commitments to end the violence in Darfur.

---

<sup>3</sup> U.S. Department of State, Background Note: *Sudan* dated January 10, 2012 (Background Note), at 3. (Ex. I)

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

In August 1993, Sudan was designated by the Secretary of State as a state sponsor of terrorism. Although Sudan has aggressively pursued terrorist operations directly involving threats to U.S. interests and personnel in Sudan, it remains on the State Department list of State Sponsors of Terrorism.

Sudan is under a broad U.S. embargo, with extensive trade restrictions on exports and re-exports to Sudan. In 1997, President Clinton issued Executive Order 13067, which declared that the policies and actions of the Government of Sudan constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.” In 2006, by Executive Order 13412, Executive Order 13067 was reaffirmed and supplemented.<sup>5</sup>

The Government of Sudan’s human rights record has remained poor, and there were numerous serious problems including: continuing genocide in Darfur; extrajudicial and other unlawful killings; 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; infringement of citizens’ rights to privacy; infringement of the freedoms of speech, press, assembly, association, religion, and movement; trafficking in persons; violence and discrimination against women and ethnic minorities; and forced labor.<sup>6</sup> Although prohibited by the Interim National Constitution, government security forces continued to torture, beat, and harass political opponents and others.” Even though it is prohibited by the Interim National Constitution and law, the government continued to arbitrarily arrest and detain under the National Security Act. “Furthermore, [a]lthough the law provides for access to a lawyer, security forces often held persons, including criminal detainees, incommunicado for long periods in unknown locations without access to their lawyers or family members.” The government monitors Internet communications and the National Intelligence and Security Service (NISS) reads email messages between private citizens.<sup>7</sup>

The U.S. Department of State continues to warn U.S. citizens against all travel to Sudan. The travel warning states travelers are reminded that the U.S. Government has received indications of terrorist threats aimed at American and western interests in Sudan.<sup>8</sup> Terrorist actions may include suicide operations, bombings, or kidnappings. The terrorist threat level throughout Sudan and particularly in the Darfur region remains critical.<sup>9</sup>

---

<sup>5</sup> Executive Order 13412, *Blocking Property of and Prohibiting Transactions With the Government of Sudan*, signed October 13, 2006, published in 71 *Federal Register* 61369-61371 (October 17, 2006). (Ex. II)

<sup>6</sup> U.S. Department of State, *2011 Human Rights Reports: Sudan*, dated May 24, 2012 (Sudan Human Rights Report), at 1-2. (Ex. X)

<sup>7</sup> *Id.* at 24.

<sup>8</sup> U.S. Department of State, *Travel Warning Sudan*, dated September 15, 2012 at 1. (Ex. XI)

<sup>9</sup> *Id.*

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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, 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. 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 interests of 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." 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 explains the Government's 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 indicates two conditions that could raise a security concern and may be disqualifying in 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's parents, two brothers, and eight sisters are citizens of and residents of the Sudan. Applicant married in 2010 and his wife lived in the United States for six months. Applicant has not had any contact with his wife or mother-in-law since shortly after her return to the Sudan and before she left for Saudi Arabia. He is exploring ways to end the marriage without having to travel overseas. His wife and his mother-in-law are not of security concern. (SOR ¶¶ 1.e and 1.f).

Applicant talks with his parents every month or every other month. He will talk with his sisters if they are at his parents' home when he calls. He talks to his brothers three or four times a year. 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 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. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In August 1993, the Secretary of State designated the Sudan as a state sponsor of terrorism. Although Sudan has aggressively pursued terrorist operations directly involving threats to U.S. interests and personnel in Sudan it remains on the State Department list of State Sponsors of Terrorism.

The Government of Sudan's human rights record has remained poor, and there were numerous serious problems including: continuing genocide in Darfur; extrajudicial and other unlawful killings; 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; infringement of citizens' rights to privacy; infringement of the freedoms of speech, press, assembly, association, religion, and movement; trafficking in persons; violence and discrimination against women and ethnic minorities; and forced labor. Government security forces continued to torture, beat, and harass political opponents and others, and continue to arbitrarily arrest and detain individuals.

The U.S. Department of State continues to warn U.S. citizens against all travel to Sudan and reminded individuals that the U.S. Government has received indications of terrorist threats aimed at American and western interests in Sudan.

It is unlikely that the Sudan would put Applicant into a position where he would be forced to choose between loyalty to the United States and his family members living in the Sudan. However, there are many others in the Sudan who would coercively target any Sudan citizen or former citizen living in the United States in an attempt to gather valuable information from the United States.

As indicated previously, the Government's burden of "substantial evidence" is low. The Government produced substantial evidence of Applicant's contacts with his family living in the Sudan, his relationship with them, and his travel to The Sudan in July and August 1997, July and August 2009, and July and August 2010, raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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.

AG ¶¶ 8(a) and 8(b) apply to Applicant's relationship with his brothers and sisters living in the Sudan. His contacts with his siblings are casual and infrequent. However, these conditions do not apply to his parents because he has a sufficiently close emotional bond with them and his contact with them is regular and somewhat frequent.

There is no evidence that his family members living in the Sudan have been political activists, challenging the policies of the Sudan Government. There is no evidence that terrorists or the Sudan Government have approached or threatened Applicant or his family in Sudan because of his work in the United States. There is no evidence that his family living in the Sudan currently engages in activities which would bring significant attention to them or that they or other elements in Sudan are even aware that Applicant works for a government contractor or might have access in the future to classified information. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation.<sup>10</sup>

Applicant has a deep relationship with his two daughters who were born in and live in the United States and he has strong connections to the United States. These actions tend to mitigate foreign influence security concerns. He has no foreign property or investments. Applicant established the application of AG ¶ 8(b). Based on his

---

<sup>10</sup> Contacts with relatives living in a foreign country are presumed to be "not casual." See ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006).

relationship to his daughters, which are his world, and depth of loyalty to the United States, he can be expected to resolve any conflict of interest in favor of U.S. interests.

### **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 the facts and circumstances surrounding this case and carefully considered Applicant's connection to his parents and siblings who are citizens and residents of the Sudan. There is substantial evidence in mitigation. Applicant has lived in the United States since 1989 and been a naturalized U.S. citizen since July 1999. He obtained his bachelor of arts degree and master's degrees from U.S. colleges. For the past 13 years, since November 1999, he has worked for a DoD contractor. (Ex. 3)

Applicant has never considered himself a dual citizen and has no loyalty to any other nation. His allegiance is to the United States where he has built his life. Becoming a U.S. citizen was the happiest day of his life together with the days when his children were born. His two daughters are the center of his life and he would never do anything to endanger them even if his parents or siblings were in danger. He has no financial ties overseas in contrast to the home and accounts he has in the United States. There is no evidence he has ever taken any action which could cause potential harm to the United States.

This Analysis must answer the question whether there is a legitimate concern under the facts presented that the Sudan Government, its agents, or other individuals in the Sudan might exploit or attempt to exploit Applicant's parents and siblings in such a way that this U.S. citizen would have to choose between his pledged loyalty to the U.S. and those relatives. After weighing the disqualifying and mitigating conditions, all the

facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Foreign Influence:                   FOR APPLICANT

Subparagraphs 1.a – 1.f:                   For Applicant

### **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 or continue eligibility for a security clearance for Applicant. Clearance is granted.

---

CLAUDE R. HEINY II  
Administrative Judge