



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

**REDACTED COPY**

ADP Case No. 14-06898

Applicant for Position of Trust

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

**SEP 28 2016**

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant's parents, siblings, wife, and wife's mother are citizens of Sudan. Only his wife resides in the United States. His father and one brother live and work in Saudi Arabia. Applicant did not mitigate the trustworthiness concerns about foreign influence. His request for eligibility to occupy a position of trust is denied.

**Statement of the Case**

On May 2, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position<sup>1</sup> for her job with a defense contractor. After reviewing the results of the ensuing background investigation, DOD adjudicators were unable to determine that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.<sup>2</sup>

On September 28, 2015, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which raise trustworthiness concerns addressed through the adjudicative

<sup>1</sup> As defined in Chapter 3 and Appendix 10 of DOD Regulation 5200.2-R, as amended (Regulation).

<sup>2</sup> Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

guideline (AG)<sup>3</sup> for foreign preference (Guideline B). Applicant timely responded on May 18, 2016, and I convened a hearing on June 28, 2016. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 and 2. Department Counsel also submitted two memoranda and attachments in support of a request that I take administrative notice of certain information about Saudi Arabia and Sudan. I granted Department Counsel's request and have included the memoranda as Hearing Exhibits (Hx.) 3 and 4, respectively.<sup>4</sup> Applicant testified and made a post-hearing submission admitted as Applicant's Exhibits (Ax.) A.<sup>5</sup> DOHA received the hearing transcript (Tr.) on July 8, 2016.

### **Findings of Fact**

The Government alleged that Applicant's wife is a citizen of Sudan and lives in the United Arab Emirates (UAE) (SOR 1.a); that his father (SOR 1.b) and one brother (SOR 1.g) are citizens of Sudan and live in Saudi Arabia; that his mother (SOR 1.c), other brother (SOR 1.d), his sister (SOR 1.e), and his wife's parents (SOR 1.f) are citizens of and live in Sudan. Applicant admitted all of these allegations. In addition to the facts established by Applicant's admissions, and based on all available information, I make the following findings of fact.

Applicant is 36 years old. He was born in the United States while his father and mother, Sudanese citizens were here for educational reasons. Applicant returned as a young child to Sudan with his parents. He lived most of his childhood in Saudi Arabia, where his father was working. In June 1997, Applicant moved to the United States for a college education. He attended a state college, then a community college, and has an associate's degree in the information technology (IT) field. He is still studying for a bachelor's degree in an IT subject. He worked for a large U.S. IT corporation from July 2012 until May 2014, when he was hired by his current employer for IT work in support of the health care system used by members of the military. He requires eligibility for a position of trust and must be found suitable to be entrusted with personally identifiable information (PII) associated with the health care system's constituents. (Gx. 1; Gx. 2; Tr. 8)

Applicant's wife is also a Sudanese citizen. They have been married since May 2013, and have two children under age 2, both of whom were born in the United States. Applicant's wife is a physician, who when they married, was working in the UAE. She moved to the United States as a conditional resident alien in September 2014 just before their oldest child was born. Applicant's wife now is a research fellow at a nationally-known medical facility here. In June 2016, she applied for a one-year extension of her conditional status. Applicant's wife's mother still lives in Sudan. Her father has been deceased for about 20 years. (Gx. 1; Gx. 2; Ax. A; Tr. 30, 43 - 44, 69)

Applicant is the oldest of five children. The older of his two brothers lives and works with their father in Saudi Arabia. Both are mechanical engineers working in private industry there. Applicant's father has lived and worked in Saudi Arabia for most

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<sup>3</sup> The adjudicative guidelines were implemented by DOD on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

<sup>4</sup> Tr. 20 - 23.

<sup>5</sup> Ax. A consists of his children's birth certificates, a receipt for his wife's application for an extension of her resident status, a copy of his wife's green card, copies of his children's social security cards, and a letter regarding Applicant's participation in a community organization.

of the past 35 years. Applicant's other brother, the youngest child, and the younger of his two sisters, still live in Sudan with or near their mother, who is a housewife. Applicant's other sister lives in Ireland with her husband of three years. Applicant speaks with his parents at least once a month. He speaks with his siblings less frequently. The last time Applicant saw any of his family in person was at his 2013 wedding in Sudan. None of his Sudanese relatives has any connection to any foreign government. (Gx. 1; Gx. 2; Tr. 30 - 34, 46 - 48, 53, 56, 59)

Applicant and his wife rent their residence in the United States. He has a retirement savings account worth between \$15,000 and \$20,000. He also is active in a local Sudanese-American civic organization. (Ax. A; Tr. 62, 69 - 70)

Based on the information provided about Saudi Arabia and Sudan in Hx. 3 and 4, respectively, I take administrative notice of the following facts:

The Kingdom of Saudi Arabia is a monarchy established in 1932. It has been ruled by the Al Saud royal family since the country's birth. The country is ruled through application of Islamic law and the 1992 Basic Law, which mandates that the country's rulers shall be male descendants of the House of Saud. The Basic Law also established that the kingdom's constitution, judicial system, the governmental system, and the rights of citizens derive from the Quran and from the teachings of the Prophet Muhammad.

Saudi Arabia has significant human rights problems. Police harass and abuse individuals to comply with religious actions and customs. Although there has been some progress in women's rights in the past few years, gender inequality and limits on basic human rights remain a common characteristic of the Saudi government. Saudi Arabia and the United States are generally aligned in geopolitical and military matters in the Middle East, because they share a common concern over regional security. Nonetheless, internal human rights abuses have strained relations between the two countries. Additionally, the State Department has issued travel warnings to U.S. citizens traveling and working in Saudi Arabia because of increased threats and attacks by ISIS and Al-Qaida in the Arabian Peninsula.

Sudan is a republic that has been controlled by an authoritarian president and a National Congress Party (NCP) that has done his bidding for more than 25 years. Sudan's human rights record is abysmal. Restriction of basic human rights is commonplace, as is violent repression of persons and groups with dissenting opinions. Sudan security forces have engaged in torture, rape, and recruitment of child soldiers. The government routinely interferes with external humanitarian aid programs, and the last election in 2010 was boycotted by opposition parties and did not meet international standards. The U.S. State Department has advised travelers to Sudan to avoid large regions of the country because there is a high likelihood of terrorist activity and other violent crime aimed at foreigners.

### **Policies**

Positions designated as ADP I and II are classified as "sensitive positions."<sup>6</sup> In deciding whether a person should be assigned to an ADP position, it must be determined that his or her loyalty, reliability, and trustworthiness are such that it is

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<sup>6</sup> Regulation, ¶ C3.6.15.

"clearly consistent with the interests of national security" to do so.<sup>7</sup> The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.<sup>8</sup>

Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>9</sup> and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors, commonly referred to as the "whole-person" concept, listed in the guidelines at AG ¶ 2(a).<sup>10</sup> The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of eligibility for a position of trust.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a position of trust for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one is entitled to a position of trust, an applicant bears a heavy burden of persuasion.

A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring applicants possess the requisite judgment, reliability, and trustworthiness of one who will protect sensitive information as his or her own. Any reasonable doubt about an applicant's suitability for access should be resolved in favor of the Government.

## **Analysis**

### **Foreign Influence**

The Government's information, along with Applicant's admissions, is sufficient to support the factual allegations under this guideline. The facts established reasonably raise a security concern about possible foreign influence that is addressed, in relevant part, at AG ¶ 6, as follows:

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

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<sup>7</sup> Regulation, ¶ C6.1.1.1.

<sup>8</sup> Regulation, ¶ C8.2.1.

<sup>9</sup> Directive, 6.3.

<sup>10</sup> "(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."

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.

Applicant has family members who are citizens of Sudan. They reside in Sudan and, in the case of Applicant's father and one brother, Saudi Arabia. His wife is still a Sudanese citizen who recently moved to the United States. The presence of his family members in Sudan and Saudi Arabia, countries with poor human rights records and a willingness to abuse their citizenry to serve their purposes, presents a heightened risk that his relatives could be used to pressure or coerce Applicant to compromise information entrusted to him.

The foregoing requires application of the following AG ¶ 7 disqualifying conditions:

- (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
- (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.

I have also considered the following AG ¶ 8 mitigating conditions:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

None of these factors apply. Applicant is close to his parents and, by association, his mother-in-law. He speaks with all of them every month, albeit with varying frequency. As for relationships and loyalties in the United States, Applicant has been in the United States since 1997. He attended college here and has been working in the IT industry here since at least 2012. However, he has only recently established a stable personal life. He and his wife were married three years ago, and have two children born in the United States in the past two years. Applicant's wife has only lived in the United States since shortly before their first child was born in 2014. She is still a resident alien and there is no information showing she has applied for citizenship. Applicant rents his home and did not demonstrate that he has any significant financial or other assets in the United States. Other than the letter attesting to Applicant's participation in a Sudanese-American civic association, he provided no other information from which to conclude he has deep and longstanding relationships in the United States that would effectively

United States that would effectively counterbalance the heightened risk presented by his close relationships in Sudan and Saudi Arabia. On balance, available information shows that the trustworthiness concerns raised by the Government's information about Applicant's family ties overseas are not mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Although Applicant has lived and worked in the United States over most of the past 20 years, Applicant's life in the United States is not sufficiently established to resolve the Government's doubts about his ability to safeguard sensitive information if the Saudi or Sudanese governments tried to leverage his personal relationships in those countries. Because protection of national security is the principal focus in these adjudications, any remaining doubts are resolved against the granting of access to sensitive information.

### **Formal Findings**

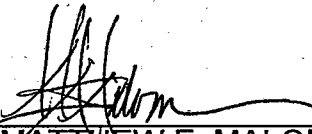
Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:                      AGAINST APPLICANT

Subparagraphs 1.a - 1.g:                      Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for ADP eligibility is denied.

  
MATTHEW E. MALONE  
Administrative Judge