



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



In the matter of:)
)
) ISCR Case No. 16-03410
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

03/26/2018

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 8, 2015. On November 23, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B.¹ Applicant answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on July 20, 2017.

¹ The DOD CAF acted under Executive Order (Exec. Or.) 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) implemented by DOD on September 1, 2006.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 28, 2017, but did not submit a response. The Government's exhibits included in the FORM (Items 1 to 5) are admitted into evidence. The case was assigned to me on November 29, 2017.

Findings of Fact

Applicant is a 58-year-old linguist sponsored for a DOD security clearance by a defense contractor. He has worked for a U.S. hotel chain and part time as a case worker for a non-profit social service organization. This is his first application for a security clearance.

Applicant has siblings, including two brothers who are citizens and residents of South Sudan. One brother was appointed as a provincial government agriculture minister. Applicant's sister and other foreign contacts are citizens and residents of South Sudan, and his daughter is a citizen of South Sudan and a resident of the United States. His sister is unemployed and his family members are not involved in politics or affiliated with the military. In addition to his brothers and sister, his foreign contacts in South Sudan include two sisters-in-law, a brother-in-law, a cousin and a friend. He has telephone contact with these people on a quarterly basis or less. Applicant admitted to the SOR allegations.

Applicant was born in Sudan, and entered the U.S. in 2000 as a refugee after fleeing violence in South Sudan. He naturalized as a U.S. citizen in 2006. He graduated from high school in 1982. He married in 1983 to a naturalized U.S. citizen from Sudan, and has 10 children. All but one of his children are naturalized U.S. citizens. His 34-year-old daughter is a permanent resident of the United States. She is an unemployed hospital clerk. She applied for citizenship in 2006, but was required to wait five years due to a federal tax problem. She resolved the tax issue and the five-year waiting period expired, but despite her desire to resubmit her citizenship documents, she does not have sufficient funds. Applicant maintains informal contact with his other siblings living primarily in Australia, New Zealand, and Canada, and has phone contact about monthly with his brothers and sister in South Sudan. Applicant last visited Sudan in 2007 and has provided about \$500 or less per year to his siblings in South Sudan over several years as gifts to help support them.

Applicant expressed his desire to serve the United States because this country "gave him his life back." He considers himself at home in America, and appreciates all that the United States has done for him.

South Sudan seceded from Sudan in 2011, and was recognized by the United States as an independent country. The U.S. played a key role in helping create the 2005 agreement that laid the groundwork for the 2011 referendum on self-determination, through which the people of South Sudan overwhelmingly voted for independence. Several areas of conflict remain between the two countries, and both suffer from significant governmental and sectarian human rights abuses, crime, civil war, violence,

and severe food insecurity resulting in a significant refugee problem. Neither country is known for intelligence collection efforts against the United States or U.S. citizens.

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. The revised AG apply to this case.

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria

listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." Egan, 484 U.S. at 531; see AG ¶ 1(d).

Analysis

Guideline B, Foreign Influence

The security concern 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 guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant has three siblings and foreign contacts who are citizens and residents of South Sudan. His daughter is a U.S. permanent resident but is still a citizen of South Sudan despite her desire to pursue U.S. citizenship. Sudan has significant human rights

problems, governmental and sectarian violence, civil war, and food insecurity resulting in a significant refugee problem. These conditions create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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.; and

(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.

Applicant has been in the United States since 2000 and he has been a U.S. citizen since 2006. His spouse and 10 children live in the United States, and all but one are U.S. citizens. A number of his siblings, in-laws, and extended family members live outside of South Sudan, but three siblings remain citizens and residents of South Sudan, along with their spouses, a cousin and friend. Applicant maintains familial contact about monthly with his family in South Sudan, but has not visited since 2007. None of the family members are involved in the government or military in a way that raises security concerns. Applicant stated his love and appreciation for America, and that he considers this to be his country. His daughter is a permanent U.S. resident.

I find Applicant has such deep and longstanding relationships and loyalties in America that he can be expected to resolve any potential conflict of interest in favor of the United States and that his familial relationships in South Korea are subordinate to his strong relationship to his family in the United States and love for this country. AG ¶¶ 8 (a) and 8(b) are applicable.

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. I have incorporated my comments under Guideline B in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's close and continuing ties to the United States, and tangential contact with family living in South Sudan. Also, despite significant human rights issues, South Sudan is not known to conduct intelligence operations against the United States or U.S. citizens.

Applicant is a loyal U.S. citizen who is seeking to work for a U.S. defense contractor as an interpreter overseas. Sudan and South Sudan continue to struggle with human rights issues and violence. The complicated state of affairs in Sudan and South Sudan places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden. I also find that his devotion to the United States, as evidenced by his statements and large family living and working in the United States after becoming citizens by choice, mitigates any concerns raised by his foreign contacts.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence security concerns.

Formal Findings

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

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| Paragraph 1, Guideline B: | For Applicant |
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| Subparagraphs 1.a-1.e: | For Applicant |
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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.

Gregg A. Cervi
Administrative Judge