



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03419

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

10/16/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated financial considerations security concerns; however, he did not mitigate foreign influence security concerns related to his familial connections to Sudan, Saudi Arabia, and the Philippines. Eligibility for access to classified information is denied.

Statement of the Case

On September 4, 2015, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On November 21, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guidelines B (foreign influence) and F (financial considerations).

On January 24, 2017, Applicant responded to the SOR and requested a hearing. (HE 3) On May 22, 2017, Department Counsel was ready to proceed. On August 8, 2018, the case was assigned to me. On August 13, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 10, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered two exhibits; there were no objections; and all of the exhibits were admitted into evidence. (Transcript (Tr.) 17-18; Government Exhibit (GE) 1-2). On September 19, 2018, DOHA received a transcript of the hearing. Applicant provided three documents after his hearing, which were admitted without objection (Applicant's Exhibit (AE) A-C) On September 24, 2018, the record closed. (Tr. 53, 57)

Security Executive Agent Directive 4, established in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Procedural Rulings

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Sudan, Saudi Arabia, and the Philippines. (Tr. 18-19; HE 5-7) Applicant did not object to me taking administrative notice of facts concerning Sudan, Saudi Arabia, and the Philippines, and I granted Department Counsel's motion. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); 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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to 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). Portions of the Department Counsel's requests are quoted without quotation marks and footnotes.

Department Counsel moved to amend the SOR adding SOR ¶ 1.j, which alleged that Applicant's spouse is a citizen and resident of the Philippines. (Tr. 51) Applicant did not object, and I granted the motion. (Tr. 51)

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/SEAD4_20170608.pdf.

Findings of Fact²

Applicant partially admitted and partially denied, or he fully admitted all of the SOR allegations. (HE 3) He also provided mitigating information. (HE 3) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 39 years old, and he is seeking employment overseas as a linguist. (Tr. 7, 33, 55) He was born in Saudi Arabia; however, he is not a citizen of Saudi Arabia. (Tr. 22) He is a citizen of Sudan because his parents were born in Sudan. (Tr. 23; GE 1) Applicant lived in Saudi Arabia until he graduated from high school in 1999, and he lived in Sudan from 1999 to 2004. (Tr. 7, 25) After his graduation from college in Sudan, he briefly performed mandatory military service in the Sudan Army. (Tr. 27)

In 2004, Applicant received a degree in civil engineering in Sudan. (Tr. 8) In 2006, he immigrated to the United States from Sudan. (Tr. 25) In 2007, he received a bachelor's degree in Middle Eastern Studies in the United States. (Tr. 7-8) In 2008, he married, and in 2013, he divorced. (Tr. 9) In 2017, Applicant married a citizen and resident of the Philippines. (Tr. 9) He does not have any children. (Tr. 9)

Applicant served in the U.S. Army from 2007 to 2010. (Tr. 10) He served a tour in Iraq, and he received the following awards during his Army service: Army Commendation Medal; Meritorious Unit Commendation (3rd Award), National Defense Service Medal; Global War on Terrorism Service Medal; Iraq Campaign Medal with Campaign Star; Army Service Ribbon; Overseas Service Ribbon; and Combat Action Badge. (Tr. 52; AE A) He left active duty as a specialist (E-4), and he received an honorable discharge. (Tr. 28) He was in the inactive Reserve until 2015. (Tr. 28)

In 2009, Applicant became a U.S. citizen, and he did not return to Saudi Arabia after 2009. (Tr. 28-29) After leaving Sudan in 2006, he returned to Sudan twice in 2013 and 2018 for visits of less than one week in duration. (Tr. 29-31) Applicant lived in Qatar from 2012 to 2015. (Tr. 41) For the first six months in Qatar, he worked for a U.S. company, and the rest of the time in Qatar he worked for the Qatar government in a low-level nonpolitical position. (Tr. 39-40, 55)

Applicant has about \$60,000 in his U.S. bank accounts. (Tr. 41) He does not have any property or bank accounts in foreign countries. (Tr. 42) He applied for a mortgage guaranteed by the Department of Veterans Affairs. (AE B) Applicant does not have any relatives living in the United States. (Tr. 53)

The SOR raises the following foreign influence security concerns:

SOR ¶ 1.a alleges that Applicant's mother, father, and sister are citizens of Sudan and residents of Saudi Arabia. Applicant's parents were born in Sudan. (GE 1) They lived in Saudi Arabia from 1978 to 2017, and then they returned to Sudan. (Tr. 23) His

² The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

father was a driver when he lived in Saudi Arabia. (Tr. 24) Applicant's parents and sister are now citizens and residents of Sudan. (Tr. 34) He communicates with his parents and sister on a weekly basis. (Tr. 35)

SOR ¶ 1.b alleges Applicant's two brothers are citizens and residents of Saudi Arabia. They are citizens of Sudan and residents of Saudi Arabia. (Tr. 35-36) They are not connected to the governments of Sudan or Saudi Arabia. (Tr. 36-37) He communicates with them on a monthly basis. (Tr. 38)

SOR ¶ 1.c alleges Applicant's brother is a citizen and resident of Sudan, and he is employed by the Sudan government. Applicant said his brother does not currently work for the Sudan government, and he does not have contact with his brother. (SOR response)

SOR ¶ 1.d alleges Applicant's brother and three cousins are citizens of Sudan, residents of Qatar, and employed by the Qatar government. The Qatar government employs his brother and cousins in low-level positions. (Tr. 37, 39) Applicant said he does not have contact with his brother and three cousins in Qatar. (SOR response)

SOR ¶ 1.e alleges Applicant's uncle is a citizen of Sudan, resident of Saudi Arabia, and employee of the Saudi Arabian government. He is a driver. (Tr. 43) He is not close to his uncle, and he has not communicated with his uncle since 2005. (Tr. 43)

SOR ¶ 1.f alleges Applicant has a cousin who is a citizen and resident of Sudan, and he is employed by the Sudan government. Applicant is not sure whether the Sudan government has continued to employ his cousin. (Tr. 44) He is not close to his cousin, and he rarely communicates with him. (Tr. 43)

SOR ¶ 1.g alleges Applicant sent about \$70,000 to his mother in Saudi Arabia. His mother has moved to Sudan. (Tr. 46) He continues to send about \$400 monthly to his brother, who sends it to Applicant's mother along with his own contribution. (Tr. 45-46)

SOR ¶ 1.h alleges Applicant sent about \$4,000 to his brother in Sudan. SOR ¶ 1.i alleges Applicant sent about \$6,850 to his brother in Qatar. He does not currently send any money to any relatives in the Middle East except for his mother. (Tr. 46, 47)

SOR ¶ 1.j alleges Applicant's spouse is a citizen and resident of the Philippines. Applicant met his current spouse online. (Tr. 32) In April 2016, he went to the Philippines to meet her in person. (Tr. 32) She lives with her parents. (Tr. 49) She has not applied to immigrate to the United States; however, she eventually plans to do so. (Tr. 49) Applicant spent three months in the Philippines. (Tr. 53) He sends about \$75 monthly to his spouse. (Tr. 53-54)

Financial Considerations

SOR ¶ 2.a alleges financial considerations security concerns in that Applicant failed to file his federal income tax returns as required for tax years 2012, 2013, and

2014. He did not file his federal income tax returns because he was in Qatar, and he did not know how to file his tax returns while in Qatar. (Tr. 80) After he returned to the United States, he did not file his tax returns because he was busy and wanted to wait until he was fully employed. (Tr. 50) In December 2016, he filed his federal income tax returns for tax years 2012, 2013, and 2014. (Tr. 50, 56) When he filed his tax returns, he paid his taxes. (Tr. 51) He filed his state tax returns at the same time he filed his federal tax returns. (Tr. 57)

Applicant's federal income tax transcripts indicate his filing date and adjusted gross income (AGI) for each year were as follows: tax year 2012, filed November 7, 2016 (AGI: \$5,445); tax year 2013, filed December 13, 2016 (AGI: \$2,983); and tax year 2014 filed December 19, 2016 (AGI: \$401). (AE B)

Sudan

Sudan is a republic with power concentrated in the presidency of Omar Hassan al-Bashir. His National Congress Party has held political authority in the Sudan for almost 30 years.

Sudan has been designated a State Sponsor of Terrorism since 1993 due to Sudan's support for the Abu Nidal Organization, Palestine Islamic Jihad, and Hizballah. The Sudan government has ended support to al-Qa'ida, but elements of terrorist organizations recruit in the Sudan.

The U.S. State Department warns U.S. citizens not to travel to Sudan, and specifically warns against travel to several areas in Sudan due to the high risk of terrorism, armed conflict, and violent crime.

In 2011, South Sudan seceded from Sudan. Some disputes between the two countries have not been resolved. A conflict has adversely affected 1.1 million people, including over 200,000 people fleeing to neighboring countries.

The Sudan government engages in human rights abuses including attacks on civilians in conflict zones. Societal abuses such as sexual violence, discrimination, trafficking in person, and child labor occur in Sudan.

Saudi Arabia

The United States and Saudi Arabia generally have good relations and share a common concern about regional security in the Middle East. Relations between the United States and Saudi Arabia were strained after the September 2001 terrorist attacks. During 2003 and 2004, terrorists and suicide bombers kidnapped or killed Americans and attacked the U.S. consulate. Terrorist attacks have been attempted or have occurred in the last several years. The State Department warns U.S. citizens to carefully consider the risks of travel to Saudi Arabia due to concerns about potential terrorist activity directed against U.S. citizens and interests.

Individuals and organizations based in Saudi Arabia have been designated by the U.S. government as providing financial and material support to al-Qa'eda and more recently to ISIL and other terrorist groups. Violence from the conflict in Yemen has occasionally "spilled over" into Saudi Arabia with numerous projectiles being launched from Yemen into Saudi Arabia. Human rights problems have occurred throughout Saudi Arabia.

The Philippines

The Philippines is a multiparty, constitutional republic with a bicameral legislature. The country conducted nationwide elections in May 2016 for the presidency, both houses of congress, provincial governors, and local government officials. International and national observers viewed the 2016 elections as generally free and fair but reported that vote buying was widespread and that dynastic political families continued to monopolize elective offices.

In its most recent annual human rights report, the U.S. Department of State reported that the most significant human rights issues included: killings by security forces, vigilantes and others allegedly connected to the government, and by insurgents; torture and abuse of prisoners and detainees by security forces; often harsh and life threatening prison conditions; warrantless arrests by security forces and cases of apparent government disregard for legal rights and due process; political prisoners; killings of and threats against journalists; official corruption and abuse of power; threats of violence against human rights activists; violence against women; and forced labor.

Extrajudicial killings have been the chief human rights concern in the country for many years and, after a sharp rise with the onset of the antidrug campaign in 2016, they continued in 2017. From January to the end of September 2017, media reports chronicled more than 900 fatalities in police operations suspected to be connected with the government's antidrug campaign. Police claimed to have begun investigations of all reports of extrajudicial killings. As of August 2017, police claimed to have resolved 1,889 cases, and 4,373 remained under investigation.

The government investigated a limited number of reported human rights abuses, including abuses by its own forces, paramilitaries, and insurgent and terrorist groups. Concerns about police impunity increased significantly following the sharp increase in police killings. President Duterte publicly rejected criticism of police killings, but he said authorities would investigate any actions taken outside the rule of law. Significant concerns persisted about impunity of civilian national and local government officials and powerful business and commercial figures.

In May 2017, members of the terrorist Maute Group and supporters of other extremist organizations attacked Marawi City, on the southern island of Mindanao. In response President Duterte declared martial law in all of Mindanao. The Armed Forces of the Philippines (AFP) restored government control of the city in October 2017. Approximately 360,000 persons were displaced as a result of the crisis.

Conflicts continued between the government and Muslim separatist, communist insurgent, and terrorist groups, displacing communities and resulting in deaths of security force members and civilians. Terrorist organizations engaged in kidnappings for ransom, bombings of civilian targets, beheadings, and the use of child soldiers in combat or auxiliary roles, and the organizations operated shadow governments in areas they controlled. The government called off negotiations with the National Democratic Front of the Philippines, the political arm of the New People's Army, in early 2017 after clashes between the armed forces and New People's Army guerilla fighters in violation of a 2016 ceasefire. The government resumed peace talks with the Moro Islamic Liberation Front.

In the Philippines, the emergence of Islamic State of Iraq and Syria (ISIS)-affiliated extremist groups, persistent kidnappings by the Abu Sayyaf Group (ASG), attacks on government forces, and bombings, all indicated that domestic and international terrorism remained a serious problem. Terrorist acts included criminal activities designed to generate revenue, such as kidnapping for ransom, extortion, and bombings for hire. However, ASG fighters on Sulu beheaded two Canadian hostages, one in April and one in June 2016, when their ransoms were not paid. The two men had been held captive since September 2015.

The Philippine government recognized the threat posed by radicalized Philippine citizens supporting ISIS and ISIS supporters traveling to the Philippines to promote violent extremism in the country or seek safe haven. Members of numerous groups – including parts of the ASG; the Dawlah Islamiyah Lanao (DIL), commonly referred to as the Maute Group; and Ansar-al Khalifah Philippines – have pledged allegiance to ISIS. ISIS called on its supporters in Southeast Asia to join these groups and attack targets in the Philippines, and named former ASG leader Isnilon Hapilon as its regional leader.

Philippine military and police counterterrorism efforts kept up pressure on terrorist organizations, but were unable to prevent numerous attacks against government, public, and private facilities, primarily in central and western Mindanao. In November 2016, a bomb was discovered and disarmed near the U.S. Embassy in Manila. In April and May 2017, bombings in Quiapo, Manila killed two and injured twenty, and conflict between terrorist groups and Philippines security forces in Marawi City, Mindanao resulted in hundreds of dead and injured. In June 2017, security forces rescued at least 60 civilians held hostage by members of the Islamic militant group Bangsamoro Islamic Freedom Fighters (BIFF) after the group launched an attack in North Cotabato. In August 2017, suspected members of the ASG attacked a village in Basilan, killing at least nine civilians and wounding a dozen more. In December 2017, an attack on a police station in Misamis Oriental by approximately 100 members of the New People's Army (NPA), which is the armed wing of the Communist Party of the Philippines (CPP), exemplified the group's frequent strikes at military, police, and local government targets.

The U.S. Department of State advises all U.S. citizens contemplating travel to the Philippines to exercise increased caution due to crime, terrorism, and civil unrest. U.S. citizens are specifically advised to not travel to Sulu Archipelago, including the southern Sulu Sea, and Marawi City, and to reconsider travel to Mindanao which remains under a

state of national emergency. Terrorist and armed groups continue plotting possible kidnappings, bombings, and other attacks in the Philippines.

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.” *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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance 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, these guidelines are applied 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 all available, reliable information about the person, past and present, favorable and unfavorable.

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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 has conditions that could raise a security concern and may be disqualifying 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;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology; and
- (e) shared 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.

Applicant admitted: (1) his mother, father, and sister are citizens and residents of Sudan, and he has frequent contact with them; (2) his two brothers are citizens of

Sudan and residents of Saudi Arabia, and he has frequent contacts with them; (3) his mother received about \$70,000 from Applicant, and he continues to provide financial support to her; and (4) his spouse is a citizen and resident of the Philippines, and he provides financial support to her. His frequent contacts with relatives in Sudan, Saudi Arabia, and the Philippines are manifestations of their care and concern for relatives living in those countries.

When an allegation under a disqualifying condition is established, “the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant’s security [or trustworthiness] eligibility. Direct or objective evidence of nexus is not required.” ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

There are widely documented safety issues for residents of Sudan, Saudi Arabia, and the Philippines primarily because of terrorists and criminals. Applicant has voluntarily shared in dangers from terrorists on behalf of the DOD when he was deployed to Iraq as a U.S. Army soldier, and he is willing to do so in the future. Numerous linguists, supporting U.S. forces, have family living in countries that have problems with terrorists and criminals. Thousands of United States and coalition armed forces and civilian contractors serving in the Middle East and Afghanistan are targets of terrorists, along with their families.

The mere possession of close family ties with relatives living in Sudan, Saudi Arabia, and the Philippines is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person living in a foreign country, 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. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant’s father to Iran).³

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, “the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.” ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation’s government’s relationship with the United States. These factors are relevant in assessing the

³ In accordance with “well established DoD policy [Applicant and his family’s] religious affiliation play[ed] no part” in this decision. ISCR Case No. 08-06795 at 6 n. 3 (App. Bd. May 25, 2012).

likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationships of Sudan, Saudi Arabia, and the Philippines with the United States, and the situation in those countries places a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member living in or visiting those countries does not pose a trustworthiness or security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in or visiting Sudan, Saudi Arabia, or the Philippines.⁴

Guideline B security or trustworthiness concerns are not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Sudan, Saudi Arabia, or the Philippines seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Sudan, Saudi Arabia, and the Philippines have a significant problem with

⁴ The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign country raise security [or trustworthiness] concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant's immediate family members -- has by virtue of a security clearance [or public trust position]. A person may be vulnerable to influence or pressure exerted on, or through, the person's immediate family members -- regardless of whether the person's family members are prominent or not.

terrorism and crime. Applicant's family in Sudan, Saudi Arabia, and the Philippines "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with relatives who are living in Sudan, Saudi Arabia, and the Philippines or visiting those countries create a potential conflict of interest because terrorists could place pressure on his family in Sudan, Saudi Arabia, and the Philippines in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with family in Sudan, Saudi Arabia, and the Philippines and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

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 United States;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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 agency head or designee;
- (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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant does not have frequent contacts with: his brother and cousin in Sudan; his brother and three cousins in Qatar; and his uncle living in Saudi Arabia. SOR ¶¶ 1.c, 1.d, 1.e, and 1.f are mitigated because of Applicant's lack of contacts and connections with these seven relatives living in Sudan, Qatar, and Saudi Arabia. He does not currently send any money to any relatives in the Middle East except for his mother. SOR ¶¶ 1.h and 1.i are mitigated because he has ended his financial support for his brothers.

AG ¶ 8(b) partially applies. Applicant has frequent contact with or a close relationship with his relatives, who are citizens and residents of Sudan, Saudi Arabia, and the Philippines. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant resided in the United States from 2006 to present, except for several years in Qatar and his deployment to Iraq.⁵ In 2009, Applicant became a U.S. citizen. He is purchasing a home and has a bank account in the United States. He honorably served in the U.S. Army, which included a tour in Iraq.

Applicant's support to the DOD in Iraq, including the dangers that service entailed, weighs towards mitigating security concerns. Applicant seeks a security clearance to

⁵ ISCR Case No. 17-00629 (App. Bd. May 24, 2018) the Appeal Board discussed a translator's multiple tours on behalf of the United States in Iraq, limited time as a resident in the United States, and connections to family living in Iraq. The Appeal Board stated:

In general, an applicant's deployment to a combat zone in support of U.S. forces is not a factor that weighs against his or her national security eligibility. On the contrary, such deployments tend to establish various mitigating conditions such as [Directive] ¶ 8(b) ("there is no conflict of interest . . . because . . . the individual has such deep and longstanding loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest"); [Directive] ¶ 8(d) ("the foreign . . . activities are on U.S. Government business"); and [Directive] ¶ 8(f) ("the value or routine nature of the foreign business . . . is such that [it is] unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.")

Id. at 3 (internal footnotes omitted) (remanding administrative judge's denial of security clearance).

enable him to continue serving the Middle East providing assistance to DOD. He has shown his patriotism, loyalty, and fidelity to the United States during his support to DOD while serving in Iraq when he was in the U.S. Army.

In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of such service on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") See *also* ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Sudan, Saudi Arabia, and the Philippines. Applicant has close relationships with family in those three countries, and they are at risk from criminals, terrorists, and human rights violations of those countries' governments. The government of Sudan is particularly problematic as it is a state sponsor of terrorism.

It is important to be mindful of the United States' huge historical investment of manpower and money in the Middle East, and Applicant has supported U.S. goals and objectives in Iraq. Applicant and his family living in Sudan, Saudi Arabia, and the Philippines are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk to his relatives living in those countries from lawless elements in Sudan, Saudi Arabia, and the Philippines.

In sum, Applicant's connections to his relatives living in Sudan, Saudi Arabia, and the Philippines are too significant to mitigate in the circumstances Applicant presented. His connections to the United States taken together are not sufficient to overcome the foreign influence security concerns under Guideline B.

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes one disqualifying condition that could raise a security concern and may be disqualifying in this case: "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." Applicant's federal income tax transcripts indicate his filing dates for tax years 2012 through 2014 were as follows: tax year 2012, filed November 7, 2016; tax year 2013, filed December 13, 2016; and tax year 2014, filed December 19, 2016. He was not required to file an income tax return for tax year 2014 because his income was below the threshold for mandatory filing. The record establishes the disqualifying condition in AG ¶ 19(f) requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20(g) states, "(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements." Applicant immigrated to the United States in 2007, and he had limited experience with U.S. federal income tax filing requirements. Applicant was overseas when his federal tax returns for tax years 2012 and 2013 were due. He did not file them timely; however, he filed them in December 2016 well before his security clearance hearing. AG ¶ 20(g) applies, and financial considerations security concerns are mitigated.

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(d):

(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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines B and F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 39 years old, and he is seeking employment overseas as a linguist in a Middle Eastern country. He is a citizen of Sudan because his parents were born in Sudan. He lived in Saudi Arabia until he graduated from high school in 1999, and he lived in Sudan from 1999 to 2004. In 2006, he immigrated to the United States from Sudan, and in 2009, he became a U.S. citizen.

In 2004, Applicant received a degree in civil engineering in Sudan. In 2007, he received a bachelor’s degree in Middle Eastern Studies in the United States. From 2013 to 2014, he worked for the Qatar government in a low-level position. In 2017, Applicant married a citizen and resident of the Philippines. He does not have any children. (Tr. 9)

Applicant served in the U.S. Army from 2007 to 2010. He served a tour in Iraq, and he received several awards and an important badge during his Army service including an Army Commendation Medal and a Combat Action Badge. He left active duty as a specialist, and he received an honorable discharge.

Applicant has frequent contact with or cares for his family, who are residents of Sudan, Saudi Arabia, and the Philippines. Frequent contacts with and financial support for family in foreign countries are manifestations of one’s care and concern for relatives living in those foreign countries. There is no evidence that his relatives are current employees of foreign governments or foreign military personnel. His and his spouse’s relationships with residents of foreign countries are positive character traits; however, they raise important foreign influence security concerns. Connections to foreign countries must be balanced against connections to the United States.

Applicant resided in the United States from 2006 to present, except for several years in Qatar and his tour in Iraq. He is purchasing a home, and he has bank accounts in the United States with about \$60,000 in them. He honorably served in the U.S. Army. He took the oath of allegiance to the United States when he became a U.S. citizen.

Applicant served a tour of duty in Iraq, and he received a Combat Action Ribbon. He made contributions at personal risk on behalf of U.S. combat forces in Iraq. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable service in Iraq weighs heavily towards mitigating of foreign influence security concerns. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting “Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating

transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.”).

A Guideline B decision concerning Sudan, Saudi Arabia, and the Philippines must take into consideration the geopolitical situation and dangers there.⁶ Those countries are dangerous places because of violence from terrorists, and their governments do not respect the full spectrum of human rights. Terrorists continue to threaten the Sudan, Saudi Arabia, and the Philippines governments, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The United States, Saudi Arabia, and the Philippines are allies in the war on terrorism. Sudan is a state sponsor of terrorism.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations security concerns are mitigated; however, foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c through 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h and 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge

⁶ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).