



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 16-03680
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esquire, Department Counsel
For Applicant: Sheldon I. Cohen, Esquire

02/01/2018

Decision

HOGAN, Erin C., Administrative Judge:

On December 28, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations. The action was initially taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on September 1, 2006. On June 8, 2017, the AGs were updated and cancelled the AGs effective September 1, 2006. This decision will be decided based on the new AGs effective on June 8, 2017. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On January 25, 2017, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 10, 2017. On June 28, 2017, Department Counsel withdrew all of the allegations under Guideline F, Financial Considerations. The case was assigned to me on November 1, 2017. On November 14, 2017, a Notice of Hearing was issued, scheduling the hearing for December 1, 2017. The hearing was held as scheduled. During the hearing, the Government offered one exhibit, which was admitted without objection as

Government (Gov) Exhibit 1. Applicant offered 18 exhibits, which were admitted as Applicant Exhibits (AE) A – B, and O – CC, without objection. AE C – N were withdrawn. The Government requested administrative notice be taken of certain facts regarding the country of Sudan. The administrative notice document was marked as Administrative Notice Document (Admin Not) I. Applicant's counsel requested administrative notice of certain facts regarding the country of Sudan, which was marked as Admin Not DD. The transcript was received on December 8, 2017. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice - Sudan¹

Sudan is a republic, with power concentrated in the hands of its authoritarian President, Omar Hassan al-Bashir. His National Congress Party has held near-absolute political power for almost 30 years. (Admin Not 1)

Since 1993, the United States has designated Sudan a state sponsor of terrorism, due to concerns about its support for international terrorist groups such as the Abu Nidal Organization, Palestine Islamic Jihad, Hamas, and Hizballah. The Sudanese government has ceased supporting al-Qa'ida, but elements of the Islamic State, al-Qa'ida, and Boko Haram are believed to recruit in Sudan. (Admin Not 1)

The U.S. Department of State warns U.S. citizens not to travel to Sudan. A March 2017 travel warning advised U.S. citizens to avoid all travel to the Darfur region, Blue Nile, and Southern Kordofan states, and to carefully consider the risks of travel to all areas of Sudan due to the risk of terrorism, armed conflict, and violent crime. (Admin Not 1)

Since 2003, the conflict in the Darfur region of Sudan between non-Arab rebels and the Sudanese government, has resulted in the deaths of over 300,000 people, and the displacement of several million refugees in need of humanitarian assistance. In 2011, South Sudan seceded from Sudan and was recognized internationally as an independent nation. Several disputes between the two countries remain unresolved, and the resulting fighting in the region has led to additional displacement of several hundred thousand refugees. (Admin Not 1)

The U.S. State Department considers Sudan to have significant human rights problems. These include: (1) the inability of the citizenry to choose its government; (2) aerial bombardment of civilian areas by military forces; and (3) attacks on civilians by government and other armed groups in conflict zones. These include abuses perpetrated with impunity by Sudan's National Intelligence and Security Services (NISS). (Admin Not 1)

NISS has demonstrated widespread disregard for the rule of law, and has committed major abuses, including extrajudicial and other unlawful killings, torture, beatings, rape, and other cruel or inhuman treatment or punishment, arbitrary arrest and detention, harsh and life-threatening prison conditions, obstruction of humanitarian assistance, restrictions on freedom of speech, press, assembly, association, religion,

¹ GE 1 (Administrative Notice filing on Sudan and supporting documents)

and movement, and intimidation and closure of human rights and nongovernmental organizations. (Admin Not 1)

Societal abuses in Sudan include discrimination against women; sexual violence; genital mutilation/cutting, early childhood marriage, use of child soldiers, child abuse, sexual exploitation of children, trafficking in persons, discrimination against ethnic minorities, persons with disabilities and persons with HIV/AIDS, denial of workers' rights, and child labor. (Admin Not 1)

On October 6, 2017, the United States revoked economic sanctions with respect to Sudan in recognition of Sudan's positive actions to maintain a cessation of hostilities in conflict areas of Sudan, improved humanitarian access throughout Sudan, and to maintain cooperation with the United States addressing regional conflicts and the threat of terrorism. (Admin Not DD)

The U.S. Country Report on Terrorism issued July 19, 2016, underscored Sudan's commitment to sustain positive dialog with the U.S. to continue collective efforts to fight terrorism through enhanced interagency and international cooperation to address the threat from ISIS and other terrorist organizations, and its willingness to pursue counterterrorism operations along with regional partners, including counter threats to U.S. interests and personnel in Sudan. In November 17, 2017, Deputy Secretary of State, John J. Sullivan, stated the United States agrees to weigh removing Sudan from the State Sponsor of Terrorism list because of Sudan's progress in promoting religious freedom and protecting human rights. (Admin Not DD)

Findings of Fact

In her answer to the SOR, Applicant admits the allegations in SOR ¶¶ 1.a and 1.b. She denies the allegation in SOR ¶ 1.c.

Applicant is a 51-year-old linguist who is an employee of a Department of Defense contractor. She has had a secret clearance since 2008 and is applying for an upgrade to top secret/sensitive compartmented information (TS/SCI). Applicant has a bachelor's degree and has received various training certifications after college. She is married and has four children, two sons, ages 27 and 20, and two daughters, ages 26 and 12. (Tr. 57-59; 90-91; Gov 1) (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information.)

Foreign Influence

Applicant was born and raised in Sudan. She attended college in Sudan. She met her husband while in college. They married in 1988 and had their two oldest children while still living in Sudan. In 1995, they immigrated to the United States. They became U.S. citizens in 2006. Their two oldest children became naturalized U.S. citizens. Their two younger children were born in the United States. Applicant has a U.S. passport. She no longer has a Sudanese passport, which expired in 2004. (Tr. 34 - 36, 53; Gov 1)

Applicant's parents are deceased. Applicant's sister and her husband are citizens of and reside in Sudan. She is 71 and is a retired college professor. Her husband is also a retired professor. He received his master's and doctorate from a university in the United States. Her sister's sons live with and support their parents. None of her relatives work for the government of Sudan or serve in the military. They do not receive money from the Sudanese government. Applicant has four brothers. Three brothers are U.S. citizens who reside in the area where Applicant resides. One brother is a citizen and resides in the Netherlands. (Tr. 59-62)

Applicant's son was married in 2016 in Sudan. He met his wife while visiting his paternal relatives in Sudan. Applicant and her family traveled to Sudan to attend her son's wedding. His wife is moving to the U.S. to live with him. The location where Applicant's relatives and friends live is a peaceful area. She felt safe when she traveled to Sudan. She stayed at her sister's house. (Tr. 63-70; AE BB-CC)

On her recent security clearance application, Applicant listed her three nieces and three nephews. One nephew is a citizen and resides in the United Kingdom. She also listed his wife who resides with him. Her remaining nieces and nephews are citizens and reside in Sudan. At present, she has no regular contact with her nieces and nephews. Her last contact was at her son's wedding in 2016. (Tr. 71-76)

On her recent security clearance application, Applicant listed several friends and extended family members who were citizens of Sudan. Two of her cousins were born in Sudan, but now live in Dubai. She last contacted them around the time of her son's wedding. She listed another cousin who lives in Sudan. She saw her cousin at her son's wedding. She listed three childhood friends who she last saw at her son's wedding. (Tr. 76-79) Applicant has over 100 extended family members who are citizens of and reside in the United States. (Tr. 102)

Applicant's Husband's Testimony

During the hearing, Applicant's husband testified. He has a bachelors' degree from a university in Sudan and earned his master's degree at a U.S. university. He currently works for a local government. He previously held a secret clearance. Between 2009 – 2010, he served with a government agency as a senior interpreter and cultural advisor in Iraq. He held other various positions requiring a secret clearance. His last position requiring a security clearance ended in 2013. (Tr. 38-41)

All of Applicant's children reside and were educated in the United States. Their older son has two years of college credit and is working full-time. Their older daughter has her college degree and is taking classes to become a computer technician. Their youngest son just started taking college classes. Their youngest daughter is in 7th grade. (Tr. 36-38)

Applicant's parents-in-law are citizens of and reside in Sudan. Her father-in-law is 90 and has Alzheimer's. He is bedridden and unable to communicate. Her mother-in-law is 83 and has an aggressive form of dementia. Her husband's younger brother and

sister care for his parents in Sudan. His parents have (or had) U.S. permanent resident status (i.e. green cards). They lived in the U.S. for six months about eight to ten years ago. They moved back to Sudan when they developed health issues. The last time he visited his parents was in November 2016. His parents and siblings in Sudan do not work for and are not connected with the government of Sudan. (Tr. 42-44)

Applicant's husband received a highly favorable reference letter from the Senior Governance Advisor for the Department of State Provincial Reconstruction Team. He describes Applicant's husband as "a phenomenal asset to our mission." Applicant's husband ranks among the top professionals he has worked with in military and international development. (AE P). For his service in Iraq, Applicant's husband received a Certificate of Appreciation from the U.S. Ambassador to Iraq. (AE Z)

Whole-person Factors

Mr. A. testified on Applicant's behalf. He is Applicant's co-worker. He is originally from Iraq and has two brothers and one sister who reside in Iraq. He became a naturalized U.S. citizen in 1996. He has held a security clearance since 2005. This year, he received a TS/SCI clearance. He states most of the linguists who work at the government agency where he and Applicant are tasked were born in foreign countries. Mr. A. has known Applicant since 2010. They work together and talk on a daily basis. He describes Applicant as very hard working. Applicant works long hours and is a good mother to her children. Since he has known her, Applicant traveled back to the Sudan once to see her family members. (Tr. 21-31)

Mr. B., Applicant's team leader, wrote a letter on her behalf. He is retired US Army Command Sergeant Major. He has worked with Applicant since January 2010. He describes Applicant as always punctual. She is often assigned difficult or complex projects and goes above and beyond the call of duty to complete the projects on time. She was tasked on several high-visibility projects which required her to work on her scheduled days off. She never hesitated to do it. Mr. B. states Applicant is one of the best linguists in the office. "She takes the hard right instead of the easy wrong." He has complete trust in Applicant. (AE U) Several of Applicant's co-workers said similar favorable things about her. (AE V; AE W).

The Assistant Program Manager has worked with Applicant since January 2014. He describes Applicant as an individual of considerable integrity, honesty and rectitude. She has worked many hours safeguarding the national security of the U.S. She has held a security clearance the entire time he has worked with her. He believes she understands the requirements of holding a security clearance and should continue to hold a security clearance. (AE X)

Applicant received several awards while serving as a linguist. In 2012, her unit received a National Intelligence Meritorious Unit Citation. (AE R; AE S) She received several coins with the award. One of the coins was from the Director of National Intelligence, to acknowledge her work in her off-duty hours to work on an important project vital to national security. (AE T)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the 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 as to obtaining 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 that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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 *a/so* 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 concern under Foreign Influence:

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 lists conditions that could raise a security concern and may be disqualifying. The following are applicable to Applicant's 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 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.

In Applicant's case, AG ¶ 7(a) and AG ¶ 7(b) apply. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant's parents-in-law and sister are citizens and residents of Sudan. Her relationship with her husband's family creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the authoritarian nature of Sudan's government, its serious human rights problems, and its issues with terrorism. The government of Sudan has made some progress, but a heightened risk remains. Applicant's contacts with her in-laws in Sudan also create a potential conflict of interest between her obligation to protect classified information and her desire to help her family members by providing that information. These concerns are also raised to lesser degree with Applicant's cousins,

brother and sister-in-laws, nieces and nephews, and several friends who are citizens of and reside in Sudan.

The Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a) and 7(b) as a result of Applicant's admissions and evidence presented. The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate security concerns. The following mitigating conditions potentially apply:

(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; 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.

I find AG ¶ 8(a) and AG ¶ 8(b) apply to Applicant's case. It is clear that Applicant has ties of affection and obligation to her sister who resides in Sudan as well as her in-laws. However, it is unlikely Applicant will have to choose between the interests of her relatives in Sudan and the interests of the United States. Applicant's relatives in Sudan live in a safe region. All of Applicant's immediate family members reside in the United States and are all U.S. citizens. All of Applicant's family assets are in the United States.

AG ¶ 8(b) applies because Applicant has deep and longstanding ties in the United States. Applicant has lived in the United States since 1995. She became a U.S. citizen in 2006. She has excelled as a linguist since 2009. She has held a security clearance since 2008. She has worked on several high profile cases that were vital to national security. Her unit received a National Intelligence Meritorious Unit Citation, and three coins. Applicant received one coin for a vital project that she was called in to work on during her off-duty hours. All of Applicant's immediate family are citizens of and reside in the United States. She has over 100 extended family members who are citizens of and reside in the United States. I considered Applicant's longstanding commitments in the United States as well as her favorable contributions to national security. The security concerns under Foreign Influence 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 relevant 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), 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 considered Applicant and her family have lived in the United States for over 22 years. She became a U.S. citizen in 2006. All of her immediate family members are U.S. citizens. Her two youngest children were born in the United States.

I considered Applicant's outstanding record as a linguist working on classified projects that were vital to U.S. national security. I also considered that her husband also previously held a security clearance and received accolades for his work for the United States. Applicant's awards and favorable references from her co-workers attest to her good character as well as her work ethic. The foreign influence security concerns are mitigated.

Formal Findings

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

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a -1.c:

For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge