



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03754

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

March 5, 2019

Decision

ROSS, Wilford H., Administrative Judge:

On March 18, 2016, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On December 27, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order (EO) 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) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on March 3, 2018, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) A complete copy of the file of relevant material (FORM) prepared by Department Counsel,

consisting of Items 1 to 7, was provided to Applicant on April 24, 2018. Applicant received received the file on June 2, 2018.¹

Item 7 is a request for administrative notice concerning the Islamic Republic of Afghanistan (Afghanistan). Department Counsel provided an eight-page summary of the facts, supported by ten Government documents pertaining to Afghanistan. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted additional information. Department Counsel had no objection and the information is admitted into evidence as Applicant's Exhibit A. The case was assigned to me on July 30, 2018. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is granted.

Findings of Fact

Applicant is 63 and married with three daughters. He seeks to obtain national security eligibility for access to classified information in connection with his employment as a linguist. (Item 3 at Section 13A.)

Paragraph 1 – Guideline B (Foreign Influence)

Applicant was born in Afghanistan in 1955. He received a medical degree in Afghanistan in 1981. Applicant was employed by the Afghan government as a medical officer assigned to a ministry from 1982 until 2008. He has had no contact with any of the people he worked with at the ministry since approximately 2016. (Item 3 at Section 12; Item 5 at 2-4.)

Applicant's sister-in-law sponsored Applicant and his family to immigrate to the United States. They began the process in 1996. Applicant, his wife, and their three daughters were approved to immigrate to the United States in 2007, and moved to the

¹ Department Counsel submitted seven Items in support of the SOR allegations. Items 4 and 6 are inadmissible. They are the summaries of unsworn interviews of Applicant conducted by interviewers from the Office of Personnel Management on January 3, 2012; and August 2, 2016. Applicant did not adopt the summaries as his own statements, or otherwise certify them to be accurate. Under Directive ¶ E3.1.20, these Report of Investigation (ROI) summaries are inadmissible in the Government's case in chief in the absence of an authenticating witness. (See Executive Order 10865 § 5.) In light of Applicant's admissions, Items 4 and 6 are also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM footnote 1, which described the potential admissibility of Items 4 and 6. I therefor reviewed them for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this decision.

United States permanently in August 2008. Applicant became a naturalized American citizen in 2014. His wife and daughters are also naturalized American citizens, living in the United States. An investigator reported, "Subject [Applicant] and his family are very happy to be living in the U.S. and are grateful for the opportunities that have been provided to them." Applicant stated that his financial situation is good. No derogatory information was found in a review of Applicant's finances. (Item 3 at Sections 9, 17, and 18; Item 5 at 9; Item 6 at 2.)

Applicant began working as a linguist in 2012, before he became an American citizen. He left the job in 2014 to be with his wife, who was diagnosed with breast cancer. He once again became employed as a linguist in early 2016, and is currently deployed to Afghanistan. (Item 2; Item 5 at 1; Applicant Exhibit A.)

Applicant obtained an American passport in 2015. During the time he was employed as a linguist as a lawful permanent resident, he used a travel document provided by the United States Government for overseas travel. (Item 1 at Section 8; Item 5 at 3.)

Applicant's parents are deceased. His father passed away in 1979, and his mother in 2016. He has numerous half-brothers and half-sisters on his father's side. Applicant does not have a close relationship with any of them, and has not had any contact with any of them in years. None of his relatives have knowledge of Applicant's job, or the fact that he is applying for a security clearance. (Item 3 at Section 18; Item 6 at 6.)

With regard to two half-brothers specifically mentioned in the SOR, Applicant had the following information:

1.b. This relative worked for an Afghan government ministry. Applicant has had no contact with him since 2015. (Item 2.)

1.c. This relative worked for the Afghan government as a doctor. Applicant has had no contact with this relative since 2008. (Item 2.)

Applicant completed a counterintelligence-focused security screening questionnaire in March 2016. (Item 5.) He was also interviewed by investigators from the Office of Personnel Management in 2012 and 2016. (Items 4 and 6.) The information provided by Applicant during these occasions was consistent, and matches his Answer to the SOR. (Item 2.)

Mitigation

Applicant is a highly respected and successful linguist. This is shown by letters of appreciation and certificates of achievement presented to him with regard to his work in Afghanistan. At one point Applicant supported an American military police battalion that

was conducting detention operations. The commanding office of the battalion stated in a letter of appreciation, “[Applicant] has played a vital role in the translation and interpretation with our Afghan Army counterparts. . . [Applicant] has always displayed a high degree of integrity, responsibility and ambition.” (Applicant Exhibit A at 2.) Applicant Exhibit A also contains five certificates of appreciation from various military units extolling Applicant’s abilities and conduct providing linguistic support during combat operations.

Afghanistan

I take administrative notice of the following facts: In 2001, the United States led a coalition to remove the Taliban from power in Afghanistan. Afghanistan remains an important partner with the United States in the fight against terrorism, and has been designated a Major Non-NATO Ally. However, numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Afghans. Even with aggressive governmental action against terrorists, the threat of terrorism in Afghanistan remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (Item 7: Attachments.)

Policies

When evaluating an applicant’s suitability for national security eligibility 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any doubt concerning personnel being considered 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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.

Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 - Guideline B (Foreign Influence)

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two 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 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.

Applicant has numerous half-sisters and half-brothers who live in Afghanistan. Two of them have worked directly for the Afghan government. The evidence is sufficient to raise these disqualifying conditions.

Afghanistan has significant internal anti-western terrorism threats that operate openly and contrary to U.S. interests. Accordingly, Applicant's substantial and close family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).²

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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;

² 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).

(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.

Applicant has minimal contact with his family members who live in Afghanistan. He last had contact with any of them in 2015, many of them not since 2008, when he moved to the United States. Applicant, his wife, and three daughters are all American citizens and reside here. Applicant's connections with his direct family here far outweigh his contacts with his half-siblings in Afghanistan. AG ¶¶ 8(a), (b), and (c) apply.

Applicant served in Afghanistan without any indication that he had breached security policies or procedures while supporting combat and detainee operations. While that fact is not normally a factor in granting national security eligibility and a clearance, the Appeal Board stated in ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) the following:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures significant probative value for purposes of refuting, mitigating or extenuating security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See e.g. ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the Applicant had made a significant impact to the national security. See e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation.

I have carefully considered the fact that two of Applicant's half-brothers have jobs with various governmental entities in Afghanistan. In this particular case, I find that Applicant has mitigated the security significance arising from their presence for the following reasons. Applicant has been subject to considerable screening for his job. He

consistently has identified his half-siblings and their jobs. The mitigating evidence makes clear that Applicant has assisted the coalition forces in Afghanistan in a substantial way. Applicant has completely mitigated the security significance of the presence of his relations in Afghanistan. Paragraph 1 is found for Applicant.

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 national security eligibility and 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but warrant additional comment.

Applicant was born and raised in Afghanistan. From 2012 through 2014, and again since 2016, he worked successfully for coalition forces in Afghanistan during combat operations. Applicant has shown himself to be a talented and patriotic American citizen and member of the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his sense of loyalty to the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concerns.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge