



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



In the matter of:)
)
) ISCR Case No. 18-01593
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2019

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline B, foreign influence. His spouse, parents, four siblings, and in-laws are all citizens and residents of Afghanistan. He failed to show sufficient deep and longstanding ties to the United States to mitigate the security concerns raised by his relatives' presence in Afghanistan. National security eligibility for access to classified information is denied.

Statement of the Case

On June 18, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented June 8, 2017.

Applicant submitted an Answer to the SOR on September 25, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted its file of relevant material (FORM) on October 23, 2018. Applicant received it on November 27, 2018. The Government's evidence is identified as Items 1 through 10. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM (Response) within the time period. Items 1 through 9 are admitted into the record. The case was assigned to me on February 11, 2019.

Procedural Rulings

In the FORM, the Government requested I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a six-page summary of the facts, supported by seven Government documents pertaining to Afghanistan, marked as Item 10. 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.

Findings of Fact

Applicant admitted all of the allegations in the SOR, with clarifications. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 31-year-old employee of a government contractor. He was born in Afghanistan. He and his immediate family fled to Pakistan from Afghanistan in August 2001 to escape the presence of the Taliban. They returned to Afghanistan in September 2003, after the U.S. presence in Afghanistan made it safe to return. He lived in Afghanistan through 2011. He graduated from high school in Afghanistan and attended some college there. He married a U.S. citizen in 2010, and immigrated to the United States on a spousal visa in July 2011. He has one minor child from that marriage. Applicant returned to Afghanistan as a translator for U.S. forces in late 2011 through May 2013, when he returned to the United States. Applicant and his spouse divorced in October 2014. His former wife has custody of their child, and Applicant pays child support. He married his second wife, a citizen and resident of Afghanistan, in April 2015. In 2017, he returned to Afghanistan as a translator. He was naturalized as a U.S. citizen in June 2017. (Item 3; Item 4; Item 5; Item 6.)

Applicant's wife is a full-time student and resides with her parents in Afghanistan. His in-laws are citizens of Afghanistan. Applicant's father-in-law is self-employed in a stationery supply company. His mother-in-law is a homemaker. Applicant has filed a petition to sponsor his wife to immigrate to the United States. They reside in a \$4,000,000 home owned by Applicant's father-in-law in Afghanistan. (Item 8.)

Applicant's mother, father, two brothers, and two sisters all are citizens and residents of Afghanistan. He also has two sisters who are permanent residents of the United States. One of his U.S.-resident sisters works as a dental assistant and the other is a homemaker. His family in Afghanistan reside together in an apartment owned by his mother. The apartment is valued at approximately \$150,000. Applicant's father is a real estate agent. His mother is a school teacher. His two of his sisters and two brothers in Afghanistan are students. Applicant sends approximately \$2,500 to \$3,000 monthly to his parent to assist with his siblings' education. He also provides money for his parents' food and living expenses. (Item 6; Item 7; Item 8.)

Applicant "does not feel he can live [in Afghanistan] because [he] grew up in an educated family, and [he] feels like [he] is not suited for the country (Afghanistan). [He] does not like the poverty in the country or the discrimination [he] received for growing up in a modern household." (Item 6 at 3.)

Afghanistan

The U.S. Department of State has issued a travel warning with respect to Afghanistan, due to crime, terrorism, civil unrest, and armed conflict. It notes that travel to all areas of Afghanistan is unsafe due to the ongoing risk of kidnapping, hostage taking, military combat operations, suicide bombings, and insurgent attacks. Attacks may target official Afghan and U.S. governmental convoys and compounds. Extremists associated with Taliban networks and the Islamic State are active throughout Afghanistan. Widespread human rights abuses are reported. (Item 10.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used 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 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 "[a]ny 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “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 that an applicant may deliberately or inadvertently fail to 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, Section 7 of EO 10865 provides that adverse 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

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 close connections to his wife, parents, siblings, and in-laws, who are citizens and residents of Afghanistan. He provides support for his family there. Further, there is an articulated heightened risk associated with having ties to family members in Afghanistan, due to the activities of terrorist organizations and insurgents operating within its borders. The evidence is sufficient to raise these disqualifying conditions.

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;

(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.

None of the above conditions are mitigating in this instance. Applicant is in close contact with his wife, parents, siblings, and in-laws in Afghanistan. He provides substantial financial support to his parents and siblings. Due to Applicant's close relationship with his family and the terrorist threats and human rights abuses in Afghanistan, I cannot find it is unlikely he would be placed in a position of choosing between them and the interests of the United States. He failed to demonstrate deep and longstanding loyalties to the United States. While he is credited for his years of service to the United States as a linguist, the record contains little information on assets, or physical or emotional bonds to the United States, aside from the presence of his child and two sisters in the United States. Without more information, it cannot be determined that Applicant would resolve any conflict of interest in favor of the U.S. interest.

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.

According to 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 applicable guidelines and the whole-person concept. Applicant served honorably as a linguist. However, the record lacks information to support a finding that he would resolve any conflicts of interest in favor of the United States. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for Foreign Influence.

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:

AGAINST APPLICANT

Subparagraphs 1.a through 1.g:

Against 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 access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge