



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



In the matter of:)	
)	
)	ISCR Case No. 18-01821
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On July 27, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DOD CAF acted 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 the adjudicative guidelines implemented on June 8, 2017 (AG).

Applicant answered (Ans.) the SOR on September 5, 2018, and requested a hearing before an administrative judge. On December 19, 2018, the case was assigned to me. On December 21, 2018, the Defense Office of Hearings and Appeals (DOHA)

notified Applicant that the hearing was scheduled for January 8, 2019. I convened the hearing on that date. Government exhibit (GE) 1 was admitted in evidence without objection. The Government's two requests for administrative notice were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A-C, which were admitted without objection. DOHA received the transcript (Tr.) on January 16, 2019.

Procedural Rulings

I took administrative notice of facts concerning Afghanistan and Russia. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.

Administrative or official notice is the appropriate type of notice used for administrative proceedings.¹ Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports.²

Findings of Fact

In Applicant's answer to the SOR, he admitted two of the allegations, with explanations (SOR ¶¶1.a-1.b). He denied the remaining allegation (SOR ¶1.c). His admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact.

Applicant is 31 years old. He was born in Afghanistan in 1987. He immigrated to Pakistan when he was five years old with his mother and two siblings. He immigrated to the United States in September 2001. He became a U.S. citizen in 2007. He received two bachelor's degrees and a master's degree from U.S. universities. He is employed by a government agency and also works part time as a government contractor, which requires a security clearance. He and his wife are expecting their first child. His wife is a native U.S. citizen. He possesses only a U.S. passport.³

The SOR alleged that Applicant's brother is a dual citizen of Afghanistan and Russia, residing in Russia. It also alleged Applicant has multiple family members who are citizens and residents of Afghanistan (one is an "Attorney General" of a province and another is employed at the Afghan embassy in Bulgaria). Finally, the SOR alleged Applicant had a family member that is a citizen of Afghanistan, residing in Pakistan.

¹ See 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).

² See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

³ Tr. at 6, 17-18, 21-22, 26, 39, 60; GE 1, 2.

Applicant is a homeowner who is current on his monthly mortgage payment. He has approximately \$40,000 of equity in his home, which has a loan amount of approximately \$460,000. His financial statement lists bank savings of approximately \$44,000 and retirement savings of approximately \$16,000. He owns no property in Afghanistan. He is a registered voter in this country. His mother, one brother, and a sister are residents and citizens of the United States. He has not provided financial support to any relatives outside of the United States, nor has he received any financial support.⁴

In 2016, Applicant established a family chat site through social media at the request of his mother so she could stay in touch with her family members. The site is set up so that once a person becomes a member of the group, then the person has access to all the comments of the other group members. Applicant stated he is not that active on the site. He will assist his mother when she wants to access it, and he may post a response to something that his mother wants him to address. For example, sending congratulations at the birth of a child, birthday wishes, etc. Not all family members have joined the group. This chat site is the primary means by which he has contact with his relatives residing outside the United States. Applicant traveled to Afghanistan in 2013 with his mother to visit relatives. He stayed approximately one month. This is the only time he traveled to Afghanistan since leaving as a child. He has no future plans to return.⁵

Applicant has the following relatives who are residents and citizens of Afghanistan:

1. Applicant's half-brother (AJ). He is 54 years old and self-employed. He has no military or government affiliations. He is not a member of the chat group. Applicant's last contact with him was approximately seven months ago.⁶

2. Applicant's half-brother (AK). He is 51 years old. His work status is unknown. He has no military or government affiliations. He is not a member of the chat group. Applicant's last contact with him was in 2013 when he visited.⁷

3. Applicant's half-brother (AW). He is 49 years old and he is a farmer. He has no military or government affiliations. He is not a member of the chat group. Applicant's last contact with him was in 2013 when he visited.⁸

⁴ Tr. at 59, 62-63; Ans. (Exh. C, D, F, G).

⁵ Tr. at 40-41, 60-61, 65; Ans.

⁶ Tr. at 42.

⁷ Tr. at 44-45.

⁸ Tr. at 44-45.

4. Applicant's half-sister (S). She is 50 years old and is a housewife. She has no military or government affiliations. She is not a member of the chat group. Applicant's last contact with her was in 2013 when he visited.⁹

5. Applicant's uncle (AKD). He is retired. He has no military or government affiliations. His two sons reside in Canada and he has applied for residency there. He is a member of the family chat group. Applicant's last contact with him was a few weeks ago through the chat site.¹⁰

6. Applicant's uncle (ASD) (he is specified in SOR ¶1.b). He is currently the Afghan Charge d'affaires in Bulgaria. He has held that position approximately one year. His wife and three children reside in Canada. He is a member of the family chat group, but is not active. Applicant's last contact with him was about 18 months ago.¹¹

7. Applicant's aunt (RD) (she is specified in SOR ¶1.b). She is a local prosecutor for an Afghan province. She has no military affiliations. She is a member of the family chat group. Applicant's last contact was a day before his hearing because he solicited additional family information to prepare for the hearing. Other than this recent contact, he does not have regular contact with her.¹²

8. Applicant's cousin (SN). He is 25 years old and is a student studying in Turkey. He has no military or government affiliations. Applicant has had no recent contact with him.¹³

9. Applicant's grandmother (SA). She is 84 years old and is disabled. She has no military or government affiliations. She is not a member of the chat group. She is limited in her means to communicate. Applicant cannot remember his last contact with her.¹⁴

10. Applicant's uncle (AR). He is disabled and lives with Applicant's grandmother and aunt. He has no military or government affiliations. He is not a member of the chat group. Applicant has no contact with him.¹⁵

⁹ Tr. at 46.

¹⁰ Tr. at 47-48.

¹¹ Tr. at 20, 48-49; AE A.

¹² Tr. at 50.

¹³ Tr. at 51-52.

¹⁴ Tr. at 52-53.

¹⁵ Tr. at 53-54.

11. Applicant's aunt (FN). She is a housewife. She has no military or government affiliations. She is a member of the chat group. Applicant has contact with her approximately once every three months.¹⁶

12. Applicant's nephew (AZ). She is 28 years old and is a mechanic at an airport. He has no military or government affiliations. He is not a member of the chat group. Applicant has had no contact with him.¹⁷

Applicant's brother (SZ) is a citizen and resident of Russia (SOR ¶1.a). Applicant does not know if he is still a citizen of Afghanistan. During the Taliban governance of Afghanistan, SZ intervened to stop the beating of a young girl. Because of his actions, he was forced to leave Afghanistan and fled to Russia. He remains in Russia with his family. He owns a business there. He has no contact or affiliation with the Russian government or the military. In 2009, Applicant's mother sponsored SZ and his family for alien residency status in the United States. Their petition is currently pending, but the backlog is significant. Applicant last saw SZ in the summer of 2018 when he visited Russia to attend the World Cup. He stayed with his brother for about 10 days.¹⁸

Applicant's cousin (AD) (subject of SOR ¶1.c) is now a resident of Canada. He received a work permit in July 2018. He intends to reside there. Department Counsel conceded that AD no longer posed security concerns under Guideline B.¹⁹

Character Evidence.

Applicant supplied character references and work performance appraisals. In his appraisal he was rated as "exceeds expectations." His supervisors and colleagues describe him as honest, trustworthy, reliable, and transparent. They recommend granting his clearance.²⁰

Administrative Notice-Afghanistan.

A U.S. State Department travel warning remains in effect for Afghanistan. Extremists associated with various Taliban networks, the Islamic State of Iraq and Levant, and members of other armed opposition groups are active throughout the country. Afghanistan continues to experience aggressive and coordinated attacks by the Taliban and other terrorist groups. The border region between Afghanistan and Pakistan remains a safe haven for terrorists. The country's most significant human-rights concern

¹⁶ Tr. at 54-55.

¹⁷ Tr. at 56-57.

¹⁸ Tr. at 57-58; Ans.

¹⁹ Tr. at 58-59, 69; Ans.; AE C.

²⁰ Ans. (Exh. A-B).

during 2015 was widespread violence, armed insurgent groups' attacks on civilians, and killing of persons affiliated with the government.

Administrative Notice-Russia.

Russia has a highly centralized, weak multi-party political system dominated by the president. Russia has significant human-rights problems, marked by restrictions on civil liberties, discrimination, denial of due process, forced confessions, torture, other prisoner mistreatment, and the government's failure to prosecute officials who commit serious violations. Government officials also engage in electronic surveillance without proper authorization.

Russia is one of the most aggressive countries conducting espionage against the United States, focusing on obtaining proprietary information and advance weapons technologies beneficial to Russia's military modernization and economic development. Russia's intelligence services as well as private companies and other entities frequently seek to exploit Russian citizens or persons with family ties to Russia who can use their insider access to corporate networks to steal secrets. They also have offered financial inducements to U.S. government officials and citizens to encourage them to compromise classified information. Russia's attempts to collect U.S. technological and economic information represent a growing and persistent threat to U.S. security.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 an 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.

Section 7 of 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 *also* 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 security concern about “foreign contacts and interests” as follows:

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 indicates 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; 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.

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members 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, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship between Afghanistan, Russia, and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Afghanistan and Russia do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Afghanistan and Russia who might be coerced by governmental entities, or pressured to assist Afghanistan and Russia.

Guideline B is 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."²¹ 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.

While there is no evidence that intelligence operatives from Afghanistan and Russia seek or have sought classified or economic information from or through Applicant or his relatives living in Afghanistan and Russia, it is not possible to rule out such a possibility in the future. AG ¶¶ 7(a) and 7(b) apply based upon Applicant's family members who are residents and citizens of Afghanistan and Russia.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, including:

²¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, 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.

Applicant credibly testified that he has limited contact with his relatives in Afghanistan and Russia. He presented sufficient evidence to establish that it is unlikely that he would be placed in a position to choose between the interest of his relatives living in Afghanistan and Russia and those of the United States. While he has numerous relatives in Afghanistan and a brother in Russia, none have any significant relationships with those governments except for his uncle who works in the Bulgarian embassy, but whose family resides in Canada. AG ¶ 8(a) applies.

Applicant has met his burden to establish his “deep and longstanding relationships and loyalties in the U.S.” He immigrated to this country when he was 13 years old and became a citizen six years later in 2007. He earned multiple degrees at U.S. universities. He married a U.S. citizen and they are expecting their first child. He is a home owner and has considerable other assets in this country. He has no assets or property in Afghanistan. His mother, a brother, and a sister are citizens of and reside in the United States. His supervisors and co-workers attest to his loyalty, dedication, and overall trustworthiness. The evidence supports that Applicant has longstanding ties to the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

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), 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. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance. I considered the recommendations of his co-workers and supervisors, who resoundingly recommend that Applicant be granted his security clearance. I also considered his strong ties to this country. He has demonstrated his longstanding loyalty to the United States. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that the security concerns arising under Guideline B, foreign influence concerns were 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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge