



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



In the matter of:)
)
) ISCR Case No. 18-02055
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

02/19/2019

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant has mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 7, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 the adjudicative guidelines (AG's) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on October 27, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on November 26, 2018. Applicant received the FORM on December 28, 2018, and had 30 days to submit material in refutation, extenuation, or mitigation. Applicant responded on January 14, 2019, by

providing a two-page typed statement. This response was marked as Applicant's Exhibit (AE) A and it was admitted into evidence without objection. The Government's documents, identified as Items 1 through 3, were also admitted into evidence without objection. The case was assigned to me on January 30, 2019.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan. The request and the attached source documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. All of the documents referenced in the Request for Administrative Notice and the facts asserted therein, are from open sources and are dated. Afghanistan has been plagued by corruption and human rights abuses; it is often lawless; and it has been described as a failed-nation-state. The United States has been at war there for over 17 years. Applicant did not object, and I have taken administrative notice of the facts contained in the HE I source documents, and incorporated them by reference. The facts are summarized in the written request and are incorporated by reference in this decision.

Department Counsel also astutely withdrew SOR ¶¶1.b through 1.g in the Government's FORM. The remaining allegations include only SOR ¶¶ 1.a and 1.h, which both concern Applicant's mother.

Findings of Fact¹

Applicant is a 34-year-old interpreter-translator sponsored for a security clearance by a defense contractor. He was employed by a federal contractor previously as an interpreter for U.S. armed forces, from May 2011 to September 2012, at forward operating bases in Afghanistan. He is a dual citizen of the United States and Afghanistan and he is fluent in the languages spoken by Afghans. This is precisely why the United States (U.S.) contractor sought Applicant out and hired him – for his esoteric language skills. He was born in Afghanistan and graduated from high school in Kabul in 1998. Applicant came to the U.S. in 2006 and he was naturalized in 2016. He has been employed as an interpreter for U.S. interests in Afghanistan since September 2017 and he plans to live and work in Afghanistan pending the grant of his security clearance.

Applicant submitted a Questionnaire for National Security Positions also known as a security clearance application (SCA) on September 21, 2017.² Applicant disclosed that he was married in 2006 and divorced in 2010. He was employed previously as an Uber driver, Lyft driver, or as a security guard, at various times since he entered the U.S. (Item 3) Applicant was unemployed from November to December 2014; from October 2012 to August 2013; and November 2009 to March 2010. Although he served

¹ Unless otherwise stated, the basis for these findings of fact is Applicant's Questionnaire for National Security Positions dated September 21, 2017 (Item 3).

² Item 3.

as a linguist for U.S. armed forces in 2011- 2012, Applicant responded negatively to questions in section 25 (Investigations and Clearance Record) of his SCA asking whether the U.S. or any foreign government previously granted him a security clearance.

Applicant was married in 2006 and divorced in 2010. He has no children. Applicant's mother and most of his siblings are citizens of Afghanistan. His mother and one brother reside in Afghanistan. Applicant has contact with his mother by telephone once every other day. She is 56 years old, lives with Applicant's brother, and she is not employed outside her home. She has never been affiliated with the Afghanistan government, or any other foreign government. His mother knows about Applicant's translator services, but does not tell others that he is working in support of U.S. concerns, out of fear for his safety. Applicant sends his mother \$500 to \$700 dollars each month to help with her rent and groceries. He sent her \$15,000 between 2009 and 2017. Applicant has no sympathy, preference for, or alliance with foreign nationals except his mother.

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 to be 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, administrative judges apply the guidelines 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(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."

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 the applicant or proven by Department Counsel." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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 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 that is 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, such considerations as whether the foreign country is known to target United States 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. The following 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's mother is a citizen and resident of Afghanistan. Afghanistan is continuously at war and continues to have human rights problems, rampant corruption, and terrorist attacks. It remains a safe haven for terrorism, and has been unstable for at least 17 years. Applicant's foreign contact with his mother may create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence. Although, he sends his mother financial aid monthly, Applicant has no expectation of ever receiving that money back. Thus, he has no financial or property interests in Afghanistan.

Conditions that could potentially mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; 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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

I considered the totality of Applicant's foreign contacts and interests. 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.³

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated

³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant admitted the SOR allegations under Guideline B, SOR ¶¶ 1.a and 1.h, in his answer to the SOR of October 2018. These contacts with his mother, and furnishing of financial aid to her, together with country conditions that create a heightened risk of coercion or exploitation, raise security concerns.

Applicant came to the United States in 2006. He became a U.S. citizen in 2016. Applicant has gone in harm's way repeatedly in Afghanistan, and supported the U.S. military in a war zone for 18 months.⁴ He has longstanding relationships and loyalties here in the U.S. Although he has provided financial support to a foreign citizen in the past, it was reasonable under the circumstances. He is gainfully employed by a federal contractor and appears to be a solid citizen. He continues to have regular contact with his mother in Afghanistan, which is to be expected of a dutiful son. There is no indication that she is affiliated with the Afghanistan government or intelligence services. His mother knows about his interpreter services and is not vulnerable to foreign coercion or exploitation. Applicant is committed to his new life here. AG ¶¶ 8(a) and (b) are applicable to the Afghanistan family-member-foreign contacts, which are alleged in SOR ¶¶ 1.a and 1.h. Because Applicant's ties to Afghanistan are minimal and inconsequential, I find that all foreign influence concerns have been 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.

⁴ The Appeal Board has held that "an Applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an Applicant in a Guideline B case." ISCR Case 04-02511 at 4 (App. Bd. March 20, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the 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.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence and personal conduct security concerns.

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 and 1.h	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert J. Kilmartin
Administrative Judge