



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



In the matter of:)
)
) ISCR Case No. 18-02083
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: Jawid Fatih, Personal Representative
05/28/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

Statement of the Case

On August 31, 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 the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on October 18, 2018, and requested a hearing before an administrative judge. The case was assigned to me on March 4, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 1, 2019. I convened the hearing as scheduled on April 19, 2019. The Government offered exhibits (GE) 1 through 3. Applicant testified and offered Applicant Exhibit (AE) A. There were no

objections to any of the exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on April 30, 2019.

Request for Administrative Notice

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about Afghanistan. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.¹ The facts are summarized in the Findings of Fact, below.

Findings of Fact

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

Applicant is 63 years old. He was born in Afghanistan. He married in 1976. His wife passed away in 2001. He has eight children. All of them were born in Afghanistan. He earned a bachelor's degree in Afghanistan. He served in the Afghan National Army from 1974 to 1997. He was a Major. In 1997, he abandoned his Army commitment and fled the country with his family, because the Taliban invaded the area where he worked, and he was concerned for their safety. He moved his family to Turkmenistan in 1998, where they lived until 2005. He and his family were granted refugee visas and moved to the United States. His eldest daughter was married at the time and moved back to Afghanistan with her husband, who is a linguist for the government of Turkey. She is a homemaker. She and her husband are citizens and residents of Afghanistan. They have six children. Applicant visited his daughter in 2015 and talks on the phone with her frequently. Applicant's seven children, who immigrated to the United States with him, are all citizens and residents of the United States. Three children are married. Their spouses are from Afghanistan and permanent residents of the United States. He has six grandchildren in the United States.²

Applicant became a naturalized citizen of the United States in 2014. From 2005 to 2010, he worked as a linguist and cultural advisor in the United States for different contractors. From January 2010 to June 2014, Applicant worked as a linguist for a federal contractor in Afghanistan. He was then an on-call temporary linguist and advisor from June 2014 until he was hired again full time in June 2017 as a linguist working in Afghanistan until the present.³

¹ Source documents are attached to Hearing Exhibit I.

² Tr. 12, 21-30, 40-53, 66-68; GE 2.

³ Tr. 30-33.

Applicant's brother and two sisters are citizens and residents of Afghanistan. Applicant did not see his brother from 1997 until 2015. He occasionally contacted him by telephone. His brother is married and has eight children. Applicant is "friends" with some of them on Facebook and will occasionally "like" their posts. His brother works for the Afghan government. Applicant also visited his two sisters in 2015. Both sisters are married and are homemakers. One sister's husband is a custodian. The other sister's husband is a retired custodian. He is not in regular contact with them. He does not discuss his job with them.⁴

Applicant does not own property or have any assets in Afghanistan. He owns a car in the United States. He helped his family purchase a house in March 2010, by giving them \$32,000. Two of his children and their families live in the house. Applicant lives there when he is in the United States. Applicant has approximately \$100,000 in his bank accounts in the United States. He does not provide any financial support to anyone in Afghanistan.⁵

Applicant explained that when he is in Afghanistan he lives on the U.S. military base. He is not permitted to leave the base due to safety concerns. He was involved in patrols outside of the base for a few months. He understands the danger of serving with the American forces. He testified that he has spent many years working with the United States military and is happy with his job. He considers himself a loyal American and would never engage in any activity that would compromise himself or the United States.⁶

Applicant provided certificates of appreciation from United States and NATO forces for his unwavering commitment in support of their missions and his outstanding performance and professionalism that contributed to their success. He also provided character letters noting his past contributions as a role player and linguist.⁷

Afghanistan⁸

The United States Department of State's travel warning for Afghanistan remains in effect and it warns U.S. citizens against travel there because of continued instability and threats by terrorist organizations against U.S. citizens. Travel there is unsafe due to ongoing risk of kidnapping, hostage-taking, military combat operations, and armed rivalry between political and tribal groups, militant attacks, suicide bombings, and insurgent attacks. These attacks may also target Afghan and U.S. Government convoys and compounds, foreign embassies, military installations, and other public areas.

⁴ Tr. 34-40, 50-52, 54.

⁵ Tr. 54, 58-62.

⁶ Tr. 70-72; GE 2.

⁷ AE A.

⁸ HE I.

As recently as December 2018, The U.S. Embassy in Kabul warned U.S. citizens in Afghanistan of reports that militants plan to conduct attacks against hotels, compounds, international organizations, universities, airports and other locations frequented by U.S. citizens and other foreign nationals.

Extremists associated with various Taliban networks, the Islamic State in Iraq and Syria (ISIS), and members of other armed opposition groups are active throughout the country. These terrorist groups routinely attack Afghan, coalition forces, and U.S. targets with little regard for or the express intent to cause civilian casualties. Due to security concerns, unofficial travel to Afghanistan by U.S. Government employees and their family members is restricted and requires prior approval from the State Department.

Afghanistan continues to experience aggressive and coordinated attacks by different terrorist groups. These groups remain active and were able to conduct a number of high-profile, mass-casualty attacks in Kabul against sectarian and Afghan government targets. They continue to plan such attacks against U.S. and coalition forces and Afghan interests. Border regions of Afghanistan and Pakistan remain safe havens for terrorists. The Afghan government struggles to assert control over this remote region.

According to a June 2017 U.S. Department of Defense report on Afghanistan, Afghanistan faces a continuing threat from as many as 20 insurgent and terrorist networks present and operating in the Afghanistan-Pakistan region, in what is the highest concentration of extremist and terrorist groups in the world.

The State Department's report on human rights for Afghanistan notes there was widespread violence, including indiscriminate attacks on civilians and killings of persons affiliated with the government by armed insurgent groups, widespread disregard for the rule of law and little accountability for those who committed human rights abuses. There was also targeted violence and endemic societal discrimination against women and girls.

Afghanistan remains an important partner of the United States in the fight against terrorism, working with the U.S. to eliminate terrorist groups. The U.S. Government continues to invest resources to help Afghanistan improve its security, governance, institutions, and economy. The U.S. Government has a strong bilateral partnership with the Afghan government.

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 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(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 applicant or proven by Department Counsel, and 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 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.

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 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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.

AG ¶ 7(a) requires evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Applicant has a daughter, son-in-law, brother, and two sisters and their spouses who are citizens and residents of Afghanistan. His brother works for the Afghan government. Applicant has ties of affection to them. He has infrequent contact with his brother and sisters, but has frequent contact with his daughter. Applicant's family residing in Afghanistan creates a heightened risk and a potential foreign influence concern.

The United States Department of State warns U.S. citizens against travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. It also has serious concerns about terrorist activities in Afghanistan that specifically target Americans. There are widely documented safety issues for residents of Afghanistan because of terrorists and insurgents. Applicant has supported the U.S. Government through his work as a cultural advisor and linguist and is willing to do so in the future. Numerous linguists, translators and advisors supporting U.S. forces, have family living in Afghanistan. Thousands of the U.S. and coalition armed forces and civilian contractors serving in Afghanistan are targets of terrorists along with Afghan civilians who support the Afghan Government and cooperate with coalition forces.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to

create the potential for foreign influence and could potentially result in the compromise of classified information.

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, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States, and the situation in Afghanistan place a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Afghanistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Afghanistan.

While there is no evidence that intelligence operatives or terrorists from Afghanistan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Afghanistan has an enormous problem with terrorism. Applicant's relationships with relatives living in Afghanistan create a potential conflict of interest because terrorists could place pressure on his family living there in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7(a). Substantial evidence was produced of Applicant's contacts with family in Afghanistan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

Applicant was a major in the Afghan military from 1974 to approximately December 1997. I do not find any disqualifying conditions are raised by his service and find in his favor concerning this allegation.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating conditions under AG ¶ 8 are potentially applicable:

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

Applicant's daughter, son-in-law, siblings and their spouses are citizens and residents of Afghanistan. He has infrequent contact with his siblings and their spouses, but not casual. It is unknown how much contact he has with his son-in-law. He has frequent and more than casual contact with his daughter. AG ¶ 8(c) does not apply.

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has served and supported U.S. forces from 2005 to the present, serving both in the United States and in Afghanistan. Applicant became a U.S. citizen, bought a home, and has considerable financial interests in the United States. Seven of his eight children are citizens and residents of the United States. He fled Afghanistan and came to the United States as a refugee.

Applicant's years of support to the United States military in Afghanistan as a linguist, including the dangers that service entailed, weigh heavily towards mitigating security concerns. Applicant is currently serving as a linguist in support of the U.S. armed forces. He continues to support the United States' goals in Afghanistan. He has expressed his loyalty and commitment to the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and resident of Afghanistan. Like every other resident of Afghanistan, any of his relatives who may be living in Afghanistan are at risk from terrorists.

Applicant's brother works for the Afghan government. His son-in-law works for Turkish forces. I have considered these contacts. It is important to be mindful of the United States' huge investment of manpower and money in Afghanistan, and Applicant has supported U.S. goals and objectives there. Applicant and his relatives living in Afghanistan are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk to his relatives living in Afghanistan from lawless elements in Afghanistan.

Applicant's possible future connections to his relatives living in Afghanistan are less significant than his connections to the United States. His employment in support of the U.S. Government, financial interests and bonds to the United States, performance as a linguist to U.S. forces, seven children who are U.S. citizens and residents, and his own U.S. citizenship are important factors weighing towards mitigation of security concerns. He has no assets in Afghanistan, and he has significant financial interests in the United States. Based on Applicant's deep and longstanding relationship and loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the United States. His connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B.

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. 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 some warrant additional comment.

Applicant serves as a linguist for a federal contractor and has actively supported the U.S. military mission in Afghanistan for 14 years. He understands the risks associated with having family in Afghanistan. Based on Applicant's past commitment and service and his continued loyalty to the United States, he has 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a-1.f: 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 to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge