



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



In the matter of:)
)
) ISCR Case No. 18-02192
)
)
Applicant for Security Clearance)

Appearances

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

08/07/2019

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns arising from his connections to family members in Afghanistan. He did not mitigate the personal conduct security concerns related to his history of misconduct and failure to disclose requested information during the security clearance investigation. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

History of Case

On March 12, 2009, February 6, 2014, and December 6, 2017, Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP). On November 27, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence), and Guideline E (Personal Conduct). On February 1, 2019, and February 27, 2019, Applicant submitted answers to the SOR and requested that his case be decided by an administrative judge on the written record without a hearing.

On April 1, 2019, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 11 Items, was mailed to Applicant on April 2, 2019, and received on April 16, 2019. The FORM notified him 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 did not submit a response to the FORM, submit additional material, or file objections to its contents. Items 1 through 11 are admitted into the record. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 20, 2019.

Procedural Ruling

I take administrative notice of facts concerning Afghanistan. Those facts are set out in the Government's Request for Administrative Notice-Islamic Republic of Afghanistan, which I marked as Administrative Exhibit (AE) 1. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 55 years old. He was born in Afghanistan in 1963. He received his education while living in Afghanistan. In 1981, Applicant graduated from high school, and in 1988, he received a certificate from a government college. After his father was killed by the Pakistani army, he fled to Pakistan in 1989 because he did not want to be conscripted into the Afghan army. He remained in Pakistan until 1992, when he entered the United States as a refugee, along with his mother and siblings. He married an Afghan citizen in 2006 while visiting Afghanistan. They divorced in 2009 in Afghanistan. He does not have any children. He became a naturalized U.S. citizen in 2006. (Items 4, 7, 9) Applicant's five siblings are U.S. residents and naturalized citizens. (Item 7)

Applicant worked as a linguist for federal contractors in Afghanistan from March 2009 to November 2009 and March 2011 to December 2012. He applied for another linguist position in November 2017. He stated that he was granted a security clearance in 2009. In between those positions, he worked in construction or as a driver in the United States. He was also unemployed at times. (Items 3, 5, 8, 9)

Foreign Influence

Applicant admitted that his mother, age 86, is currently a citizen and resident of Afghanistan. She has lived there since 2013. Prior to that, she lived in the United States periodically after she immigrated in 1992. He contacts her twice a week. (Items 2, 9 at 21) In his answer to the SOR (Answer), Applicant denied that one of his brothers-in-law is a citizen of Afghanistan. He stated that his brother-in-law recently moved to the United States and lives with Applicant's sister. He does not know his brother-in-law's citizenship status. There is no information regarding how often Applicant contacts him or confirmation that his brother-in-law now lives in the U.S. (Item 2)

Applicant admitted in his Answer that he provides financial support for his mother, extended family, and friends. He sends money to friends to maintain his family's residence in Afghanistan. His mother lives in that residence, which he estimated has a value of \$80,000. He denied that he supports his former wife, as he previously disclosed in his 2017 e-QIP. (Items 2, 7, 9) In his December 2017 Counterintelligence Focused Security Screening Questionnaire (CFSSQ), Applicant stated that between 2009 and 2013, he sent \$500 to his cousin and also to a friend as gifts. He sent \$6,300 to his brother-in-law to help poor citizens and pay for Applicant's father's medical expenses while he was alive. (Items 6, 8)

Personal Conduct

The SOR alleged that Applicant has a history of arrests, falsifying his 2014 and 2017 e-QIPs, and engaging in misconduct related to his businesses. The allegations are as follows:

(¶ 2.a) In 1995, Applicant was arrested and charged with soliciting a prostitute. He disclosed this information in his March 2009 Screening Questionnaire (SQ). He stated that he talked to a prostitute for a cousin, who could not speak English. He was convicted and placed on probation for one year. (Item 7 at 7) In his Answer, he denied the allegation and said he did not recall the incident. (Item 2)

(¶ 2.b) Applicant denied that he was arrested and charged with aggravated harassment in November 2000. A state court record indicated that he pleaded guilty to disorderly conduct and an order of protection was entered against him for one year. (Item 11)

(¶ 2.c) In June 2002, Applicant was arrested and charged with aggravated harassment, involving his previous girlfriend. He disclosed this information in his 2009 e-QIP and noted that the charges were dismissed. He admitted this allegation in his Answer. (Item 2, Item 3 at 39; Item 4 at 7)

(¶ 2.d) In October 2008, Applicant was arrested and charged with assault. He disclosed this information in his 2009 e-QIP and stated that he was charged with hitting his 12-year-old niece in the face. The case was subsequently dismissed. Applicant admitted this allegation in his Answer. (Item 2, Item 3 at 38, Item 4 at 7)

(¶ 2.e) In November 2009, a defense contractor terminated Applicant's employment after they received an anonymous complaint that he was smoking hashish. Applicant was working in the Middle East at that time. (Item 10) Applicant denied that he was using hashish and said he was "framed" by others. (Item 2)

(¶ 2.f) In December 2012, another defense contractor terminated Applicant's employment after he tested positive for illegal drug use. (Item 10) Applicant denied that he was terminated, but said he voluntarily left because his contract ended. (Item 7 at 20, Item 8 at 3)

(¶ 2.g) In November 2013, Applicant was arrested and charged with obstructing governmental administration. Applicant denied the allegation. A court document confirmed that he was charged and the case was dismissed. (Item 11)

(¶ 2.h) In his Answer, Applicant stated he did not recall if he disclosed in his 2014 e-QIP his December 2012 termination for drug use, as alleged in SOR ¶ 2.f. He asserted that he submitted many e-QIPs and other documents and said he disclosed that information in some of them. He denied the allegation regarding his drug use. (Item 2) In his 2014 CFSSQ, he explained that he had a conflict with another employee, who reported him as using hashish. He said he was dismissed by his employer without being given a drug test. (Item 6 at 2)

(¶ 2.i) Applicant admitted that he was arrested in October 2008 and November 2013, as alleged in SOR ¶¶ 2.d and 2.g. He said he did not disclose the arrests in his 2014 e-QIP because both cases were dismissed. He denied that he falsified his 2014 e-QIP. (Item 2)

(¶ 2.j) During his January 2018 interview, Applicant stated that from December 2014 until May 2016, he lived and worked in Afghanistan. He told the investigator that he and his brother-in-law, a citizen and resident of Afghanistan, started a business partnership, buying gas from Iran and shipping it to Afghanistan. Applicant said he registered the business in his brother-in-law's name because as a U.S. citizen he was subject to U.S. sanctions and prohibited from doing business with Iran. (Item 9 at 18) In his Answer, he denied any wrongdoing and asserted that he was unfamiliar with the U.S. sanctions. (Item 2)

(¶ 2.k) In his 2017 e-QIP, Applicant disclosed that he was self-employed as a homebuilder in the United States from January 2014 through November 2017, part of which time he claimed he lived in Afghanistan. (Item 7 at 18) During his January 2018 interview, he stated that he did not register his U.S. business with the state or report any income to the state or IRS. (Item 9 at 2, 18) In his Answer, Applicant denied these allegations, claiming he performed construction work as a hobby and not as a business. (Item 2)

(¶ 2.l) In his 2017 e-QIP, Applicant disclosed that for the past ten years he resided in the United States from October 2012 to the present (December 2017). He failed to disclose that he had resided in Afghanistan from December 2014 through May 2016. In his Answer, he denied that he falsified information about his residency. He said that either he or the person interviewing him in 2018 did not correctly insert the information into the e-QIP or other documents. (Item 2) He did not clarify the dates of his residency in Afghanistan in his Answer.

(¶ 2.m) Applicant admitted that he did not disclose in his 2017 e-QIP the facts alleged in SOR ¶ 2.f, relating to his job termination in December 2012 for using drugs. He asserted that he had submitted all relevant information numerous times about the

termination and his drug test, and stated that he did not falsify information in the e-QIP. (Item 2)

(¶ 2.n) In his 2017 e-QIP, Applicant did not disclose that he had a business partner or associate in Afghanistan, or had contacts with Iran within the past seven years, as requested. He denied that he falsified his e-QIP because he claimed his brother-in-law was not “an official business partner.” (Item 2)

(¶ 2.o) During the January 2018 interview, Applicant did not disclose that he had an employment problem with his former employer in December 2012 and was terminated for testing positive for drug use, as alleged in ¶ 2.f. He denied that he deliberately withheld the information and asserted that he was confused by the interviewer’s questions. (Item 2)

Afghanistan

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Afghanistan. Specifically, Afghanistan faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups are increasingly active throughout Afghanistan. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all travel to Afghanistan should be avoided. Of particular significance are the poor human rights situation; the active and hostile presence of Al Qaida, the Taliban, the Haqqani Network; and other insurgent and extremist groups that generate instability and openly attack police, security and military forces, the local populace, and U.S. persons and interests. (AE 1)

Policies

The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD after June 8, 2017.

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny 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 *a/so* Executive Order 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 describes conditions that could raise security concerns and may be disqualifying under AG ¶ 7. Three 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.

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, that 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).

Afghanistan has significant internal anti-western terrorism threats that operate openly and contrary to U.S. interests. Accordingly, Applicant's close connections to his mother, extended family, and friends living there create a significantly heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

Applicant has ongoing connections with his mother, extended family, and some friends, all of whom are citizens and residents of Afghanistan. He periodically sends money to them. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Afghanistan seek intelligence or engage in behaviors that are hostile to the United States' interests. Applicant's relationship with those people creates a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help family members living in Afghanistan. The evidence is sufficient to raise a disqualification under AG ¶ 7(b).

After the Government produced sufficient evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on these facts:

(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; 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.

Considered in light of the substantial anti-western insurgent and terrorism threats in the region, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his family ties there. He has legitimate and appropriately close relationships with his mother, family members, and friends living in Afghanistan, and a strong interest in protecting those people. His communication and contact with them, in addition to his financial support, are sufficiently frequent that his interactions cannot be considered casual nor infrequent. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and 8(c) as to the allegations in SOR ¶¶ 1.a, 1.b, and 1.c.

The evidence also fails to establish significant mitigation under AG ¶ 8(b). A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has some connections to the United States: he is a U.S. citizen and resident; his five siblings are citizens and residents of the United States; and he has worked in various positions since arriving in the United States in 1992. However, those connections do not outweigh his connections to Afghanistan where he was born, raised, and established a business for a number of years. His mother, with whom he has a close relationship, is a citizen and resident of Afghanistan, as are some friends and extended family members. Applicant also moved back to Afghanistan and lived there for two years after becoming a U.S. citizen. There is insufficient evidence to conclude that Applicant's U.S. ties are so deep and longstanding that he can be expected to resolve any conflict of interests involving family or friends in Afghanistan in favor of the U.S. interests. Accordingly, he did not fully mitigate the security concerns raised under this condition.

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes four conditions that could raise a security concern and may be disqualifying in this case. They include:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

Applicant deliberately falsified or concealed relevant facts in his 2014 and 2017 e-QIPs as alleged in SOR ¶¶ 2.h, 2.i, 2.m, and 2.n. He deliberately falsified or concealed information in his 2017 e-QIP about where he lived for the past 10 years, as alleged in SOR ¶ 2.i. The evidence established security concerns under AG ¶ 16(a), as to those allegations. Applicant deliberately provided misleading information to an investigator during his January 2018 interview, as alleged in SOR ¶ 2.o. The evidence established security concerns under AG ¶ 16(b).

Applicant has a history of criminal conduct, as alleged in SOR ¶¶ 2.a, 2.b, 2.c, 2.d, and 2.g. He was terminated from two positions for using illegal drugs as alleged in SOR ¶¶ 2.e and 2.f. Applicant failed to report income from his business to the state or the IRS, as alleged in SOR ¶ 2.k. This pattern of personal misconduct, when considered as a whole, raises questions about Applicant's judgment, reliability, and unwillingness to comply with rules and regulations. The evidence established security concerns under AG ¶ 16(c).

As alleged in SOR ¶ 2.j, between December 2014 and May 2016, Applicant lived in Afghanistan where he started a business with his brother-in-law, a citizen and resident of Afghanistan. They purchased gas from Iran and shipped it to Afghanistan. Applicant registered the business in his brother-in-law's name because, as a U.S. citizen, he could not legally engage in business with Iran. His personal conduct creates a vulnerability to exploitation by a foreign entity or other individuals and establishes a security concern under AG ¶ 16(e)(3).

There is insufficient evidence to support a disqualifying condition for the allegations raised in SOR ¶ 2.i. Applicant credibly asserted that he did not disclose two arrests in his 2014 e-QIP because both cases were dismissed.

AG ¶ 17 provides conditions that could mitigate security concerns and include five that could potentially apply:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not make prompt efforts to correct his omissions or falsifications. There is no evidence that he was advised to provide false or inaccurate information in his e-QIPs or during his interview. Applicant has not acknowledged his falsifications or misconduct and has not taken steps to assure the Government that similar behavior is unlikely to recur. His explanations for falsifying information are not credible and individual instances of misbehavior did not occur under unique circumstances. None of the listed mitigating conditions apply to any of the SOR allegations.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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 Guidelines B and E in my whole-person analysis.

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant failed to mitigate the security concerns pertaining to foreign influence and personal conduct. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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
Subparagraph 1.a:	Against Applicant

Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

Paragraph 2: Guideline E:	AGAINST APPLICANT
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Subparagraphs 2.a through 2.h:	Against Applicant
Subparagraph 2.i:	For Applicant
Subparagraphs 2.j through 2.o:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge