



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



In the matter of:)
)
) ISCR Case No. 18-02201
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2019

Decision

LYNCH, Noreen A., Administrative Judge:

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

Statement of the Case

On September 13, 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 September 1, 2006.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive (SEAD) 4, revising the 2006 AGs. The revised AGs apply to all adjudicative decisions issued on or after June 8, 2017. I have based my decision on the newly effective AG.

Applicant timely answered the SOR, and requested a hearing. I was assigned the case on March 7, 2019. The hearing was scheduled on July 11, 2019, when Applicant would be in the United States. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, presented one witness, and submitted Applicant Exhibits (AX) A-G. The transcript was received on July 19, 2019. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

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 15 years. Applicant did not object, and I have taken administrative notice of the facts contained in the GX 5 source documents, and incorporated them by reference. Additional facts are summarized in the written request and will not be repeated in this decision.

Findings of Fact

Applicant is a 51-year-old interpreter-translator sponsored for a security clearance by a defense contractor. He was born in Afghanistan. Applicant came from a family of ten children and fled Afghanistan as a refugee with his family to Pakistan in 1988. (GX 4) He is single and has no children. He completed 12 years of education in Afghanistan and earned a degree in information technology from a U.S. business school in 2000. Applicant came to the United States in 1988, and became a naturalized citizen in 1996. (GX 2) In 2011, he applied for a position as a subcontractor to mission essential personnel, but he could not accept the position because his mother was ill. (GX 4) He has been working in Afghanistan as a linguist since 2017. (GX 4) Applicant submitted a Questionnaire for National Security Positions (SCA) on January 25, 2018. (GX 2) He has never held a security clearance.

Applicant's father, who is now deceased, worked in Afghanistan for a U.S. government agency. Applicant's father sent one of his sons to the United States in the 1960's. (Tr. 27)

Applicant's widowed mother and most of his ten siblings live in the United States as naturalized U.S. citizens or in Canada. (Tr. 30) Applicant has limited contact with his brother S, who does not live in Afghanistan as alleged. He lives in the United States. Applicant saw him at a wedding in the United States in 2008. None of his family live in Afghanistan now and none are affiliated with the Afghanistan government, or any other foreign government. They do not know anything about Applicant's application for a

security clearance. During his clearance interview, Applicant stated that he has never been confronted by anyone while in Afghanistan who seeks information about his employment. Also, he has no sympathy, preference for, or alliance with foreign nationals. He works on the Army base, working with soldiers, and is not allowed to leave the base. (Tr. 37) Applicant had never returned to Afghanistan, from 1988 until his current work, in 2017. (Tr. 38)

Applicant disclosed on his SCA and his other security screening questionnaire that when his father died in 1987, property was left to the family, to be divided among the siblings and Applicant. One item is a home in Afghanistan with an approximate value of \$200,000 U.S.D. (SOR 1.b) The second item is a factory operated in Afghanistan with an approximate value of \$1,500,000. (SOR 1.c)

Applicant explained that his one brother (S.) has taken charge of the properties and will not sell them as he was required to do after the death of his father. The brother S. refuses to sell the property and the rest of the family is in disagreement. Relationships have broken down due to the massive disagreement. Applicant also testified that he has no desire to have a part of the inheritance. If the issue were to be resolved, Applicant would give his share to his mother. (GX 4) He has engaged in discussions with his brother S. as late as 2008, but his brother is managing the property and Applicant has no authority to change the situation. (Tr. 22) He also believes that his brother S. has changed his name. (Tr. 23) Applicant expressly wrote in his Answer to the SOR that he does not desire ownership of the properties, and he considers the United States his home. He also believes the U.S. dollar amounts are inflated after being in Afghanistan.

Applicant's other brother (D.) also works as a linguist in Afghanistan. (Tr. 23) He is a U.S. citizen and normally resides in the United States with his family. He spoke to the other brother S, and confirms that he lives in the United States. (Tr. 36)

Applicant denied the SOR allegations under Guideline B, SOR ¶¶ 1.a through 1.c, in his Answer to the SOR. He explained and answered all questions at the hearing concerning the SOR allegations. His testimony was confirmed by his witness. Applicant was credible and assured that he knew what to do if approached by someone asking him to compromise information. He was clear that such occurrence would be reported to security.

At the hearing, the witness testified that he has known Applicant since 2013. He considers himself almost a brother. The witness stated that applicant has given him good advice over the years and is always ready to help. The witness served in the U.S. military and was honorably discharged in 2015. He noted that Applicant offered the witness a place to live when he left the service. (Tr. 54) The witness emphasized that he trusts Applicant fully. Applicant has taken care of the witnesses' special needs child at certain times. (Tr. 56).

Applicant currently earns about \$71,000 a year as a linguist. (Tr. 39) He is renting a home. He has a car. He is saving money for retirement. He has taken many

positions and worked hard to go to school and earn a living in the United States. In his current position, he translates and advises the officers of the U.S. Government and the Afghan government. He travels on missions and is sometimes in dangerous situations. (Tr. 43)

Applicant submitted five statements from character references. Three U.S. military officers who have worked with Applicant in Afghanistan in 2018 support him for a security clearance. They each describe Applicant as among the best of 29 linguists working with the battalion. He is dedicated, reliable, and works well with sensitive missions. (AX A) Applicant is an extremely valuable member of the team and has contributed significantly. He has a knowledge of both Dari and Pashtu. Under stressful situations, he has remained composed, even under a high profile attack.

Applicant conducted 280 missions in the area of air assault assignments. Applicant maintains an exceptional work ethic. He maintained a strong security posture. He is adaptive and works with adjacent units. His knowledge of culture, history, and current events in Afghanistan have shaped the operating environment. (AX B, C) Applicant's employer vouches for him and wrote that he has received nothing but praise for Applicant. Applicant's employer worked for 34 years in the military and recommends Applicant for a security clearance. Applicant submitted three letters of appreciation for his dedication and sacrifice in 2018 and 2019.

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;
- (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;

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign-owned or foreign-operated business that could subject the individual to heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's widowed mother and siblings are citizens and residents of the United States. One brother resides in Canada. Another brother, who is a U.S. citizen, works as a linguist in Afghanistan. The brother (S) who allegedly lives in Afghanistan lives in the United States. Applicant has not seen him since 2008. 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 for at least 15 years. It is often lawless, and has been described as a failed-nation-state. Applicant's foreign contacts may create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members. AG ¶¶ 7(a) and 7(b) have been partially raised by the evidence. AG ¶ 7(f) is raised due to the inheritance issue. Applicant has no authority over his brother to sell the properties. He does not even want a part of it. Given the circumstances in this case, Applicant was credible in that he can do no more to resolve the issue.

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;

(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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

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.¹

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 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 came to the United States in 1988. He became a U.S. citizen in 1996. His family resides in the United States or Canada and are naturalized citizens. He has no contact with his brother S. who lived in Afghanistan, but to Applicant's knowledge now lives in the United States. He has spent half of his life in the United States. Applicant has gone in harm's way repeatedly over the last year, and supported the U.S. military in a war zone. He has longstanding relationships and loyalties here. Although he has the alleged issue of family business and property circumstances, the Government did not dispute or refute what Applicant states. (Tr. 62) He is gainfully employed as a linguist. He has been described as a solid citizen. He has had no contact with the brother S. There is no indication that his family is affiliated with the Afghanistan government or intelligence services. His one brother also works as a linguist in

¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Afghanistan. The other siblings are U.S. citizens living in the United States. Applicant is committed to his new life here. AG ¶¶ 8(a), (b), and (f) are applicable to this case. 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.

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 and in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines.

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 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 – 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch
Administrative Judge