



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



In the matter of:)
)
) ISCR Case No. 18-02534
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence, and under Guideline H, drug involvement and substance misuse. Eligibility for access to classified information is denied.

Statement of the Case

On November 9, 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 H, drug involvement and substance misuse. 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 within the DOD on June 8, 2017.

Applicant answered the SOR on December 16, 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) containing seven Items, and it was received by Applicant on March 27, 2019. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not respond to the FORM, provide documentary evidence, or object to the Government's evidence, and it is admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on June 5, 2019.

Request for Administrative Notice

In the FORM, Department Counsel submitted Items 6 and 7, which requested that I take administrative notice of certain facts about Iran and Afghanistan. Applicant did not object, and I have taken administrative notice of the facts contained in the requests that are supported by source documents from official U.S. Government publications that were provided with the FORM. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.b and 1.c. He denied the SOR allegations in ¶¶ 1.a and 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 34 years old. He was born in Afghanistan. He entered the United States in 2008. He became a naturalized citizen in October 2013. In 1998, prior to immigrating to the United States, he moved with his father and brother from Afghanistan to Uzbekistan because his father feared for his family's safety. At that time, his mother and sisters moved to Iran where his mother's parents lived. Applicant lived in Uzbekistan with his father and brothers until their refugee status was approved in 2008. He lived with his mother in Iran for approximately six months while awaiting refugee status. Applicant is unmarried and has no children. (Items 3, 4, 5)

From December 2011 to June 2012, Applicant worked as an interpreter with U.S. forces in Afghanistan. Previous to this, he worked for federal contractors in the United States, as a role player and cultural advisor with U.S. forces preparing for deployment to the Middle East. From July 2012 to January 2018, he worked for a federal contractor as an interpreter. Applicant provided several certificates of appreciation and achievement from the military units he supported. (Item 2)

At the time Applicant submitted his security clearance application (SCA) in February 2018, his mother and two sisters were living in Iran. Applicant and his father and brother were living in the United States. His mother has since moved to the United States and obtained a permanent resident card in August 2018. His sisters, who are citizens of Afghanistan, have married and live in Iran with their families. During his March 2018 background interview, Applicant stated that he had weekly telephone contact with his sisters.

Applicant traveled to Iran in 2011, 2013, 2014, 2015, 2016, and 2017, to visit his family members living there. On each visit, Applicant obtained visas to enter Iran by the use of his Afghanistan passport. He traveled back to the United States using his U.S. passport. He has a cousin with whom he maintains contact who is a citizen and resident of Afghanistan. On several occasions, Applicant used his cousin as an intermediary to send money to his mother when she lived in Iran. He would send his cousin the money, and he would then transfer the money to Applicant's mother in Iran. (Item 4)

In his February 2018 SCA, Applicant disclosed that in the past seven years, he used marijuana. He stated: "I used it as a recreation purpose on occasions." He noted he used it from January 2012 to November 2017. He further stated that he used it: "Once every three months on average for a total approximate use of 15 times." Regarding his future intention to use a controlled substance, he said: "I am planning to work as a Contract Linguist directly working with the US military. Therefore, I decided to never use it again." (Item 3)

In Applicant's February 2018 Counterintelligence Focused Security Screening Questionnaire (CFSSQ), he was asked to describe his current and past drug usage. He responded: "Marijuana I used three months ago. I've done it maybe 10 or 15 times in my life." Applicant told the interviewer that he used marijuana with various acquaintances and co-workers. He said that he smoked marijuana with co-workers and role players in the United States at different job locations when he was a role player or interpreter. The marijuana was provided by other role players or acquaintances. Applicant told the interviewer that his last marijuana use was in approximately October 2017, and he did not intend to use it again. (Item 4)

In Applicant's March 2018 background interview, he disclosed to the investigator that in 2015 he began to smoke marijuana. He estimated he used it about 16 times for experimental purposes. He said he used it with two friends that he met through mutual friends and people he met through rotations he had with an employer. He disclosed he worked for this employer as an interpreter from July 2012 to January 2018. He used marijuana either at his friend's house or at his own house. He told the investigator that he did not intend to use it in the future because he wanted to get a job with a federal contractor. (Items 3, 5)

In Applicant's answer to the SOR, he denied ¶ 2.a, which alleged: "You used marijuana from approximately January 2012 to January 2018." He stated in his response: "I told the officer that was interviewing me that I have used marijuana only 3 times in my life." (Item 2)¹

¹ Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but may be considered when making a credibility determination, in the application of mitigating conditions, and in the whole-person analysis.

Afghanistan

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 is unsafe due to ongoing risks 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.

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 and 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. (Item 7)

Iran

Iran has been designated as a state sponsor of terrorism since 1984. It remains the most prominent state sponsor of terrorism, providing financial aid, advanced weapons and tactics, and direction to militant and terrorist groups across the Middle East. It

cultivates operatives across the globe as a contingency to enable potential terrorist attacks.

Iran uses terrorist groups to implement foreign policy goals, provide cover for intelligence operations, and create instability in the Middle East. It remains an enduring threat to the U.S. national interests. Iran and its primary terrorism partners pose a persistent threat to the United States and its allies worldwide. The U.S. Government does not have diplomatic ties or consular relations with Iran. The Department of State warns U.S. citizens not to travel to Iran due to the risk of arbitrary arrest and detention.

Iran continues to leverage cyber espionage, propaganda, and attacks to support its security priorities, influence events and foreign perceptions, and counter threats, including against U.S. allies in the region. The U.S. Director of National Intelligence (DNI) has identified several countries, including Iran as posing a significant cyber threat against the United States. The DNI specifically noted that Iran will continue to penetrate U.S. and allied networks for espionage and to position itself for potential cyber-attacks. There is also concern that Iran will expand its influence in the region and will develop military capabilities that threaten U.S. forces.

In 2015, the Visa Waiver Program was amended. Under the amendment, citizens of Iran, Iraq, Sudan, and Syria are ineligible to travel or be admitted to the United States. The exclusion of these countries from waiver eligibility reflects: that the presence of an individual from that country increases the likelihood that the individual is a credible threat to the national security of the United States; that a foreign terrorist organization has a significant presence in the country; or that the country is a safe haven for terrorists.

Iran has a poor human rights record. There are severe restrictions on civil liberties, including freedom of assembly, association, speech, religion, and the press. Other problems include abuse of due process, combined with the use of capital punishment for crimes that do not meet requirements for due process, as well as cruel, inhuman, or degrading treatment and punishment; and disregard for the physical integrity of persons, whom authorities arbitrarily and unlawfully detained, tortured, or killed. There are numerous other human rights problems in Iran. (Item 6)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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.

Applicant's mother and two sisters are citizens of Afghanistan. His mother recently became a permanent resident of the United States. She previously lived in Iran. Applicant lived with her in Iran for six months while he was waiting for refugee status to immigrate to the United States. His sisters are citizens and residents of Iran. They are married and live in Iran with their families. Applicant's cousin is a citizen and resident of Afghanistan. Applicant traveled to Afghanistan in 2011 and to Iran in 2011, 2013, 2014, 2015, 2016, and 2017 to visit his family living in those countries. He provided funds to his mother when she lived in Iran and used his cousin as a financial intermediary. There is an articulated heightened risk associated with having ties to family members in Iran and Afghanistan due to the activities of terrorist organizations and insurgents operating within their borders. The evidence is sufficient to raise these disqualifying conditions.

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:

(a) the nature of the relationship 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 and interests of the U.S.;

(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.

None of the above conditions are mitigating in this instance. Applicant maintained contact with his family in Iran by visiting them in 2011, 2013, 2014, 2015, 2016, and 2017. Although his mother recently moved to the United States, his sisters and their families remain in Iran. In his background interview, he said that he maintained weekly telephone contact with his sisters in Iran. It is unknown if his contact has changed since his mother moved to the United States. It is unknown if he or his mother plans to visit them in Iran. Applicant provided his mother financial support while she was living in Iran. Presumably, he remains close with his mother. It is unknown whether she has influence over Applicant, or if she intends to visit her daughters in the future.

Applicant also maintained close and continuing contact with a cousin, who is a citizen and resident of Afghanistan. He used his cousin to act an intermediary to send money to his mother in Iran. He no longer does that because his mother lives in the United States. Applicant traveled to Afghanistan in 2011. I have considered Applicant's service as an interpreter for about seven months in Afghanistan in 2011-2012, and his employment as a cultural advisor and role player in the United States. Due to Applicant's close relationship with his family in Iran and Afghanistan, I cannot find his contact with family members living there is casual or infrequent. Applicant has traveled to Iran frequently since immigrating to the United States in 2008. There is insufficient evidence to find that it is unlikely that Applicant would be placed in a position of choosing between his family and the interests of the United States. Applicant did not provide sufficient evidence of deep and longstanding connections to the United States, such as property interests or other community ties. Without more information, it cannot be determined that Applicant would resolve any conflict of interest in favor of the U.S. interest.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

(a) any substance misuse; and

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant disclosed in his SCA, CFSSQ, and during his background interview that he used marijuana approximately 10 to 15 times from approximately January 2012 to October 2017. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

By his own admissions on three different occasions when responding to questions as part of the security clearance process, Applicant disclosed that his marijuana use began in 2012 and continued until October 2017. He stated he used it about 10-15 occasions during that time. He stopped using it because he wanted to obtain a job with a government contractor. In his answer to the SOR, he denied the extent of his marijuana use and stated that he used it three times in his life. He also disclosed that he used it with co-workers while acting as a role player. Under these circumstances, I cannot find that his use was infrequent, happened under unique circumstances or does not cast doubt on his current reliability, trustworthiness, and good judgment.

Based on his contradictory responses regarding the extent of his use of marijuana, I am unable to determine if Applicant is committed to refraining from future use. It is unknown if he has disassociated himself from drug-using associates and whether he has avoided the environment where drugs were used. There is no evidence of completion of

a drug treatment program. Applicant's behavior casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a), 26(b) and 26(d) do not apply.

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 Guidelines B and H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 34 years old and has been a naturalized U.S. citizen since 2013. I have considered that he worked for a U.S. contractor in Afghanistan for about seven months and worked in the United States as a role player and cultural advisor for the military. I have considered Applicant's close ties to his sisters in Iran and his cousin in Afghanistan. Applicant's marijuana use over an extended period of time while he was working as a role player raises concerns about his ability to comply with rules and regulations. Applicant provided insufficient evidence to meet his burden of persuasion. The record evidence leaves me with 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant

Subparagraphs 1.b and 1.c:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge