



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



In the matter of:)
)
-----) ISCR Case No. 14-02089
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*
04/06/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On July 31, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). In a response signed on September 5, 2015, and supplemented between September 11, 2015, and September 15, 2015, he admitted four of the five allegations raised. He also requested a determination based on the written record in lieu of a hearing. In the interim, Applicant's employer ceased sponsoring Applicant for a security clearance in 2014 due to downsizing, thereby eliminating this body's jurisdiction over the matter.

In early 2018, Applicant was rehired by the same entity and again sponsored for a security clearance, so processing of this case resumed.¹ On February 26, 2018, the Government issued a File of Relevant Material (FORM) with six attachments ("Items"). Applicant's March 26, 2018, response to the FORM was received on April 4, 2018, and accepted into the record without objection. The case was assigned to me on May 17, 2018. A request to introduce supplemental material was made by Applicant. After the

¹ This action was taken was considered 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 adjudicative guidelines (AG) effective within the DOD on or after June 8, 2017.

Government expressed no objection, a recommendation on Applicant's behalf was accepted into the record on September 6, 2018. The record was then closed. Based on my review of the case file and submissions, I find Applicant failed to mitigate security concerns.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about The Islamic Republic of Afghanistan (Afghanistan) and The Russian Federation (Russia). With no objection to the inclusion of these materials, I have taken administrative notice of the facts contained within those requests. Selected facts from those sources are reflected below.

Findings of Fact

Afghanistan

Afghanistan is an Islamic Republic with a directly elected president, a bicameral legislative branch, and a judicial branch. Afghanistan remains an important partner with the United States against terrorism. Afghanistan works with the U.S. to eliminate the remnants of al-Qaeda and its affiliates. The U.S. continues to invest U.S. resources to help Afghanistan improve its security, governance, institutions and economy. The United States' strong bilateral relationship with Afghanistan is guided by the Enduring Strategic Partnership Agreement (SPA) between Afghanistan and the United States signed in May 2012, which lays out economic and political commitments, as well as by the 2014 Bilateral Security Agreement, which lays out mutual security understandings. In July 2012, Afghanistan was designated a Major Non-NATO ally.

The U.S. has engaged in on-going conflicts in Afghanistan since 2001. While there has been a drawdown in the number of U.S. troops in Afghanistan, troops now train Afghan forces. U.S. forces continue to disrupt and degrade al-Qaeda and Islamic State activities in Afghanistan through partnered operations with Afghanistan, as well as unilateral operations. It is a U.S. priority to rid Afghanistan of terrorism.

The U.S. Department of State, however, issued a travel advisory warning U.S. citizens not to travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. Afghanistan also has significant human rights problems to include extrajudicial killings by security forces, ineffective government investigations of abuse and torture by local security forces, poor prison conditions, arbitrary arrest and detention, and judicial corruption. Widespread disregard for the rule of law poses a serious problem. (Item 5)

Russia

Russia has a highly centralized, authoritarian political system led by President Vladimir Putin. Although "[t]he United States has long sought a full and constructive

relationship with Russia,” current relations between the two old war allies appear to have again turned adversarial. Of note, in August 2017, the President signed into U.S. law sanctions targeting Russia for, in part, Russian interference in the 2016 U.S. elections and Russia’s aggression in Ukraine, including its continuing unlawful annexation of Crimea. In 2015, the (former) Director of National Intelligence reported to Congress that the leading state intelligence threats to the United States will continue to come from two main countries, one of which is Russia.

A recent human rights report from the U.S. State Department reflects the commission of significant human rights violations in Russia, including restrictions on political participation and freedom of expression. It also noted the lack of due process in politically motivated cases (Item 6)

Findings of Fact

Applicant is 61-year-old senior linguist. He first worked for his present employer in about 2014. After a brief period of unemployment due to downsizing, he was again employed as a linguist in approximately July 2016. His commander noted that his services within a specialized area have been “indispensable,” and he lauded Applicant’s skills. (Supplemental Response to FORM) Applicant is a dedicated and self-sufficient worker. He has received a letter of appreciation from a member of the highest ranks for his commendable enthusiasm, unwavering willingness to perform his duties with such high caliber, and “selfless generosity and commitment.” (SOR Response, attachment) Several other letters of appreciation, recommendations, and certificates of appreciation were also submitted by Applicant, reflecting his excellent work performance.

Applicant was born and raised in Afghanistan. There, Applicant earned both a bachelor’s and a master’s degree in engineering before starting a career in general construction. In 1993, due to the upheaval and danger in Afghanistan, Applicant moved his family to Russia as refugees. There, he leased an electronics store and “worked very hard” to raise the funds to emigrate to the United States in 2004. He left Russia when he was in his late 40s, first returning the business to its landlord. (SOR Response at 2) Applicant and his family, including his wife and six adult children, became naturalized U.S. citizens in early 2010. Applicant honors his oath as a U.S. citizen and is committed to defending this country.

In Afghanistan, Applicant left a brother who was a citizen and resident of that country. The brother passed away in November 2016. (FORM Response) The two had not communicated for a few years before the brother died.

Applicant has one daughter who came to the United States after he did. She remains a citizen of Afghanistan, is currently a registered alien living in the United States, and has applied for U.S. citizenship. In 2014, she began to suspect that her husband, a citizen of Afghanistan, was using her and their marriage to obtain U.S. residency. (SOR Answer at 2) This son-in-law, a citizen of Afghanistan, was last known

to be a U.S. resident.² The couple divorced in late 2015. Neither Applicant nor his family members maintain contact with this former in-law. Applicant's daughter, like four of her other siblings, lives near or with Applicant and his wife in the United States.

Applicant's sixth child, another daughter, has remained a citizen and resident of Russia. She and her husband, who is also a citizen and resident of Russia, have three young children. In March 2012, Applicant's wife filed a sponsoring petition on behalf of this daughter, son-in-law, and children to immigrate to the United States. (FORM Response) That petition is still being processed. Applicant maintains bi-weekly contact with his daughter through an Internet program.

Applicant's Russian kin do not know of Applicant's work and "have no idea that [he] worked [in a capacity aiding the United States]." (FORM Response) Only Applicant's wife knows of Applicant's work and his place of employment. No family member is in fear due to his work. (FORM Response) Applicant emphatically conveyed that his "family members do not represent a cause of divided loyalty" for him, nor can they be used to coerce him into assisting a foreign power. (FORM Response) None of his family members are affiliated with any foreign military or organizations. Applicant sends no money to his family members abroad because he has "his own family members . . . in the U.S. and [he is] working hard to support them, and they are [his] first and last priorities. . . ." (FORM Response) In 2017, Applicant bought a new home in a new state, where his wife and all but his Russian-based child now reside.

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. 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. 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 in making a decision.

The protection of the national security is the paramount consideration. Under the AG, any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national interest. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

² The SOR allegation at 1.c alleges that Applicant has a son-in-law who is a citizen and resident of Afghanistan and is employed by the Afghan Foreign Ministry. This son-in-law now lives somewhere in the United States. His present employer is unknown.

The Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, 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 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

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. citizen to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant has natural ties of affection with multiple family members who are citizens of either Afghanistan or Russia, and residents of either Afghanistan, Russia, or the United States. These include or have included Applicant's brother, two daughters, and two sons-in-law. It may be assumed he maintains normal familial attachments with his sibling, daughters, and in-laws. Such contacts could compromise Applicant or his kin. I find disqualifying conditions AG ¶¶ 7(a)-(b) potentially apply:

AG ¶ 7(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

AG ¶ 7(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 ¶ 8 provides three conditions that could possibly mitigate security concerns:

AG ¶ 8(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, or government and the interests of the U.S.;

AG ¶ 8(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 interests in favor of the U.S. interests; and

AG ¶ 8(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.

The presence of terrorism in Afghanistan is well established. Russia's active pursuit of U.S. protected information is similarly recognized. Consequently, these countries represent zones of high risk in terms of the security of Applicant's kin and the possibility foreign interests could pursue protected information believed to be in the possession of Applicant.

Applicant has clearly set forth that he is a proud U.S. citizen who is committed to defending this country. He arrived in the United States in 2004 and became a naturalized U.S. citizen eight years ago. He lives in this country with his wife, and all but one of his children also live with him in the United States. As a family unit, they trailed along with Applicant when he moved and purchased a new home in a new state in 2017. There, they are enjoying the benefits of living in the United States of America. Applicant is committed to his life in the United States and to providing a secure and financially stable home base for his domestic kin. Except for two of his daughters, all of Applicant's children are naturalized United States citizens.

Applicant's recently divorced daughter who lives in the United States, but retains Afghan citizenship, resides with Applicant. She is in the process of becoming a U.S. citizen. The family maintains no relationship with her ex-husband. As for Applicant's brother in Afghanistan, he passed away in 2016 after a period devoid of communication with Applicant. Applicant has no remaining relations in Afghanistan.

Remaining abroad is the daughter of Applicant who resides in Russia with her husband and three children. While Applicant maintains communication with this daughter every two weeks via the Internet, neither she, her husband, nor any of Applicant's family except Applicant's wife know of his career or where he works. No money is sent to the couple in Russia, as Applicant focuses on providing for his immediate family residing with or near him in the United States. Applicant's wife has initiated sponsorship for the Russian kin to immigrate to the United States. Their status toward that goal is presently pending. None of Applicant's relations have a nexus with a foreign government or organization. I find AG ¶¶ 8(a)-(b) apply.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed in the AG. The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the written record. In addition to Applicant's foreign relations, I considered factors such as his age, profession, education, and employment history.

The facts offered with regard to Applicant's family members with a nexus to Afghanistan and Russia were substantially updated in 2018. Applicant's brother in Afghanistan has been deceased for a couple of years after a period of non-communication. The first of Applicant's daughters at issue is now a legal resident of the United States with an application pending for U.S. citizenship; she has divorced her Afghan husband and her family no longer has contact with him.

Remaining at issue is Applicant's daughter and son-in-law in Russia, the country in which Applicant and his family resided for several years as refugees from Afghanistan. While Applicant maintains contact with this daughter via the Internet regularly, she does not know what he does for a living or where he works. Neither she nor her husband has a nexus to a foreign government or military. Applicant's spouse has submitted sponsorship applications to permit this daughter and her family to immigrate to the United States.

While the Russian kin pose some degree of concern, both Applicant's expressed feelings and track record reflect that he considers the United States to be his family's seat. There is a demonstrated intent to reassemble his large family in his new state of resident. He owns a home large enough to accommodate his family. He is devoted to his work. He uses his income for the betterment of his family in the United States only, considering those individuals to be of his utmost concern. At the same time, Applicant is exceptionally lauded for his translating work in a specific field. His recommendations and letters of appreciation are impressive. He is clearly an experienced and valuable

addition to his employer's mission. Considering all these factors, I conclude Applicant's loyalty to the United States outweighs his loyalties for the Russian family now attempting to immigrate to the United States.

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.e: 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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge