



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



In the matter of:)
)
) ISCR Case No. 18-01801
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

January 27, 2020

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing dated January 4, 2017. On March 5, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense 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 June 8, 2017.

Applicant answered the SOR on July 25, 2019, and requested a hearing before an administrative judge. The case was assigned to me on October 3, 2019. DOHA issued a notice of hearing on that same day, and the hearing was convened as scheduled on October 22, 2019. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. Applicant offered no exhibits, but testified on his own behalf. The record remained open until close of business on November 5, 2019, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted fourteen Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 14, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 31, 2019.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the countries of Afghanistan and Saudi Arabia. Department Counsel provided a 6 page summary of the facts, supported by 7 Government documents pertaining to Afghanistan, identified as HE 1. Department Counsel also provided a 5 page summary of the facts, supported by 5 Government documents pertaining to Saudi Arabia, identified as HE2. The documents provide elaboration and context for the summaries. Applicant had no objection. I took administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

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

Applicant is 44 years old, is married, and has eight children. He has a high school diploma and/or GED and two years of college, and is currently applying for a position as a Translator. A security clearance is required in connection with this employment with a defense contractor.

Applicant was born in Afghanistan on April 21, 1975. In 1982, at the young age of seven, Applicant and his family fled Afghanistan, because of the war, and became refugees in Pakistan. Applicant lived in Pakistan until 1992. During that time, he finished high school and two years of college in Pakistan. He also learned how to speak English. (Tr. p. 38.) Applicant then moved to Saudi Arabia, where he could find employment to support his family and resided there from 1992 to 2004. During that time, he worked at a gas station and at a restaurant. In 2004, the U.S. forces came to Afghanistan and the country became much more secure. Applicant could speak English and so he applied for and was hired to work with the U.S. forces in Afghanistan. From 2004 to 2008, Applicant worked as a translator for the U.S. military in Afghanistan. He

did not have a security clearance, nor was he a U.S. citizen, and so his duties and responsibilities were limited. In 2008, Applicant came to the United States on a Special Immigrant Visa. In 2009, he deployed to Afghanistan where he worked for the U.S. military for 21 months. Applicant explained that at some point, on a convoy or mission under fire, an IED blew up underneath his seat. (Tr. p. 53.) He continued to do his job without faltering or showing fear.

Applicant became a naturalized U.S. citizen in 2014. Since then, he has lived in the United States. Now with hopes of obtaining a security clearance, he plans to go back to work for the U.S. forces as a Translator or Linguist and provide unlimited information. He presently works as a Lyft driver.

To provide some background, Applicant married an Afghan woman in 1995. Together they have eight children, who are citizens and residents of Afghanistan. Applicant's spouse has a green card and resides with their eight children in Afghanistan where the children go to school. Since 1995, Applicant has spent only about six months out of every year with his family in Afghanistan and the rest of the year he spends in Pakistan to work in order to provide for their financial support.

Applicant has nine siblings, five brothers, three who are citizens of Afghanistan and residents of Saudi Arabia. He also has four sisters who are citizen and residents of Afghanistan. One of his brothers is a citizen of Afghanistan and was a resident of India. This brother was going to school in India and working toward earning his Master's degree in Business. He recently returned to Afghanistan and is working for the Department of Agriculture. Two of his brothers live in Afghanistan. They are both physically ill, unable to work, and are financially supported by their sons who are both teachers. Three of his brothers are currently living in Saudi Arabia. There are no jobs in Afghanistan and it is easier to find work in Saudi Arabia. Two are working in a restaurant and the other works for a touring company. Applicant speaks to them about once every three, four or six months, or on the holidays. (Tr. pp. 33-34.)

Applicant has four sisters who are citizens and residents of Afghanistan. They would all like to come to the United States. All of them are housewives. None of their husbands work for the military or the Government. (Tr. p. 39.) Since none of them have cell phones, Applicant does not speak with them on any regular basis. If he gets a chance to call one of their children, he may get the opportunity to speak to one of his sisters. None of Applicant's nephews or nieces work for or are affiliated with the Afghan military or Government. (Tr. p. 40.)

Applicant explained that his wife and eight children live with three of his brothers and their families on a huge family compound that they all inherited from their grandfather. (Tr. pp. 42-43.) The house is divided into smaller apartment areas, but they all own the property together. None of the Applicant's sisters reside on the family compound. Applicant provides all of the financial support for his wife and children. He provides no other financial support to any of his extended family members. Since 2008, Applicant has visited his family in Afghanistan every three or four months. He provides

no financial support to his siblings, or their families, as they either take care of themselves or they do not need his help.

Applicant has no foreign bank accounts, but does own his portion of the family compound in Afghanistan. He has no family or property in the United States. (Tr. p. 53.) He has a bank account and a vehicle in the United States. (Tr. p. 45) He states that next year, he plans to move his entire family to the United States, where all of his children will attend school. (Tr. pp. 46-47.)

Applicant is uniquely talented. He speaks 5 languages which include Farsi, Pashto, Urdu, Hindi, and Arabic. He also speaks 6 or 7 dialects of Pashto. (Tr. p. 66.) A number of laudatory letters of recommendation from defense contractors and pertinent military personnel that Applicant has worked with and who have direct knowledge of his abilities attest to his experience as a translator, knowledge of the country, loyalty, professionalism, and great overall value he has given to the mission. (Applicant's Post-Hearing Exhibits 1 through 9.)

Applicant has received a number of Certificates of Appreciation from U.S. forces for his outstanding translator support and contributions to the missions. (Applicant's Post-Hearing Exhibits 10 through 14.)

I have taken administrative notice of the information set forth in the Government's briefs and supportive documents on the countries of Afghanistan and Saudi Arabia. (HE1 and HE2.) In summary, both countries provide a significant and heightened security risk to the United States.

Policies

When evaluating an applicant's suitability for a security clearance, 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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information 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 access to classified information. 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 information.

Section 7 of Executive Order (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 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 notes several conditions that could raise security concerns under AG ¶ 7. Two 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.

Applicant's foreign family members include his spouse, his eight children, and his five brothers and four sisters, and their families, who are citizens and residents of Afghanistan. As Applicant explained, his brothers and their families live together on the same compound with his spouse and eight children. The family is close. Based upon the evidence presented, his foreign family connections clearly raise serious security concerns and pose a heightened risk of foreign exploitation, inducement, manipulations, pressure, or coercion. Given the violative situation that exists in Afghanistan, and the nature of the job Applicant is applying for, there could easily be a conflict of interest between Applicant's obligation to protect classified or sensitive information and his desire to help his large immediate family as well as his large extended family in Afghanistan. Under the particular circumstances here, the risk-benefit analysis is applicable, and this contact as well as the nature of the relationships pose a significant security risk to the U.S. Government. Applicant has subjected himself to a heightened risk of foreign influence or exploitation or personal conflict of interest from his ongoing connection with his family in Afghanistan.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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.

Applicant's large family in Afghanistan, and the nature of his relationships with his family, clearly pose a security risk. There is a great potential for a conflict of interest. Although Applicant is a naturalized U.S. citizen, he has only lived in the United States for five years, and does not have any family or assets other than a vehicle in the U.S. All of his family, for the most part, are in Afghanistan or Saudi Arabia. His house he owns with his brothers is in Afghanistan. His relationship with them is close and ongoing, and can possibly result in divided allegiance. Insufficient mitigation under AG ¶ 8(a), 8(b), and 8(c), has been established in regard to his family members. The relationship poses a heightened security risk particularly relevant to this proceeding.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Applicant's close familial connections pose a significant security risk to the U.S. Government that has not been mitigated under the particular facts presented in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 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
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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 interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge