



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



In the matter of:)	
)	
)	ISCR Case No. 19-01245
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/01/2020

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant refuted the personal conduct security concerns, but failed to mitigate the foreign influence, and drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 19, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B, foreign influence, E, personal conduct, and 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 some of the SOR allegations on September 10, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel repeatedly requested that Applicant provide answers to the allegations he

neglected to answer in the SOR. Applicant failed to respond to the requests. Department Counsel submitted the Government's file of relevant material (FORM), and it was received by Applicant on April 13, 2020. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 11. Applicant did not provide a response to the FORM or object to the Government's evidence. Items 1 through 11 are admitted. The case was assigned to me on June 11, 2020.

Department Counsel requested that I take administrative notice of certain facts about Afghanistan. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in Afghanistan.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a, 2.a, 2.b, and 3.a, with explanations. He failed to respond to the allegations in SOR ¶¶ 1.b through 1.e, which will be considered denials. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He was born in Afghanistan. He married in 2005 and moved to the United States in 2007 on a spousal visa. His wife is a naturalized citizen of the United States. He became a naturalized citizen in 2011. He has two children born in the United States, ages nine and five years old. He resides in a home he owns. He has worked for a federal contractor as a linguist assigned to Afghanistan from July 2018 to at least the date of his answer to the SOR. He also previously worked for a federal contractor as a linguist from April 2010 to February 2013, assigned to Afghanistan. Applicant was self-employed during other periods. (Item 3)

Applicant's brother, sister, half-brother, and two half-sisters are citizens and residents of Afghanistan. His brother is 65 years old and retired from the Afghan Army in 1988. Applicant stated in his SOR Answer that his brother quit the Army due to unfair circumstances. He stated his brother receives a partial mental disability pension. He has quarterly telephonic or electronic contact with him. Applicant did not disclose his sister's employment or means of support. He has monthly telephonic contact with her. (Item 3)

Applicant's half-brother is a university student in Afghanistan. Applicant has monthly telephonic and electronic contact with him. Both of Applicant's half-sisters are teachers employed by the Ministry of Education. Applicant has quarterly telephonic or electronic contact with them. (Item 3)

During Applicant's October 30, 2018 interview with a government investigator, he disclosed he visited his family in Afghanistan in 2013, 2014, 2015, 2016, and from December 2017 to January 2018. This information was not included in his October 5, 2018 security clearance application (SCA). He also disclosed that he sends money

quarterly to his half-brother in Afghanistan. In the past, Applicant provided financial support to his brother, sister, and half-brother in Afghanistan. (Items 4, 7)

In the past, Applicant provided about \$15,000 in financial support to his nephew, who is a dual citizenship of Afghanistan and the United Kingdom (UK), and currently lives in the UK. (Item 3)

During Applicant's October 2018 Counterintelligence Focused Security Screening Questionnaire (CIFSSQ), he was asked if there is any country he had allegiance to over the United States. He responded that the United States is his country, but he is also loyal to the UK because he has family there, and he is also loyal to Afghanistan. He would like to live in Europe and have his children grow up with his family's children, because they are lonely in the United States, but believes that is not possible. He confirmed that he is more loyal to the United States. (Item 4)

In April 2010, Applicant completed a CIFSSQ. In it he disclosed that in 2004 he used marijuana two to three times while living in the UK, but had not used it since that time. (Item 6)

In Applicant's April 2012 CIFSSQ, he disclosed that he used marijuana once per week when he lived in the UK and his last use was in 2005. (Item 5)

In Applicant's August 2018 CIFSSQ, he disclosed he had used marijuana about twice a week from 2016 to 2018 while living in the United States. He used it because it was fun and stopped using it because he did not want his use to affect his employment with U.S. Forces. He stated he never thought about the illegality of his use.

On his October 5, 2018 security clearance application (SCA), Applicant answered "no" in response to the question if he had in the last seven years illegally used drugs. (Item 3)

In his October 2018 interview with a government investigator, Applicant said he used marijuana a total of five to six times with his nephew in the U.S. from 2017 to the present. Whenever his nephew obtained marijuana, they smoked it to relax. Applicant was attempting to quit smoking and used marijuana in its place. He told the investigator that he did not disclose his drug use on his SCA because he believed his use was now legal, and he had no intention to use it in the future due to its potential impact on his eligibility to hold a job with U.S. Forces. He told the investigator that he had used marijuana from 2004 to 2008 once or twice a month with a nephew while he was in the UK. (Items 4, 7)

In Applicant's SOR Answer he stated:

It was a big mistake made by me and that happened due to ignorance and lack of knowledge about the drug classifications. Honestly speaking one of my friends mentioned to me that marijuana is legally allowed in [State A], so while living in [State A] it was revolving in my mind that once it is legally

allowed it might not be counted [as] illegal drugs, so due to the ignorance the word “no” uttered from my mouth on (e-QIP). (Item 2)

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 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. 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; 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.

There is a significant threat of terrorism and ongoing human rights problems in Afghanistan. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, through his contact with his family members there. Applicant maintains close contact with them. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (a) that 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 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.

I considered the totality of Applicant's ties to Afghanistan. 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 has been a U.S. citizen since 2011. His immediate family, to include his wife and two children, are citizens and residents of the United States. He also owns a home in the U.S. Applicant also has close ties to his brother, sister, half-brother, and two half-sisters, who are residents and citizens of Afghanistan. He maintains regular contact with them and visits them annually. He provides financial support to his family in Afghanistan. The evidence provided by Applicant is sparse and limited. Although Applicant has significant ties to the United States, he also has significant and ongoing ties with his relatives in Afghanistan, and there is insufficient evidence to conclude that he would resolve a conflict of interest in favor of the United States. Applicant failed to provide sufficient evidence to conclude that he is unlikely to be placed in a position of having to choose between his relatives in Afghanistan and the interests of the United States. There is insufficient evidence that Applicant's contact with his family in Afghanistan is casual and infrequent. The evidence does not establish mitigation under any of the mitigating conditions.

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 used marijuana with varying frequency from approximately 2004 to 2008 and from 2016 to sometime in 2018. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from drug involvement. 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.

Applicant has a history of marijuana use and stated his last use was in mid-2018. In his September 2019 answer to the SOR, he stated he does not intend to use it in the future. Applicant frequently used marijuana with his nephew who supplied the drug. He provided inconsistent responses to his frequency of use. There is no evidence he has disassociated from his nephew or discussed his intention not to use marijuana with him in the future. No evidence was provided to confirm that Applicant has changed or avoided the environment where drugs are used or if he has continued to abstain from marijuana use. Due to Applicant's long history of marijuana use and recent commitment

to abstinence, there is insufficient evidence to conclude future use is unlikely to recur. 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. There is no evidence of completion of a drug treatment program. There is insufficient evidence to fully apply the mitigating conditions under AG ¶¶ 26(a), 26(b) and 26(d).

Guideline E: Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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.

The SOR alleged that Applicant deliberately failed to disclose his past drug use. Applicant stated that because the use of marijuana was legal in the state where he lived, he thought he was not required to disclose his use. Applicant also disclosed his drug use to the Government in his August 2018 CIFSSQ. I find this is a credible explanation for his failure to disclose this information, and he did not deliberately omit this information from his SCA. AG ¶ 16(a) has not been established. SOR ¶ 3.a is concluded for Applicant.

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 have incorporated my comments under Guidelines B, H, and E in my whole-person analysis.

Applicant has significant ties to the United States and also significant ties to his family in Afghanistan. The complicated state of affairs in Afghanistan places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has not met that burden. Applicant's long history of drug use does not outweigh his recent assertions that he is abstaining from drug use.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but failed to mitigate the foreign influence and drug involvement and substance misuse 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:	Against Applicant
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline H:	Against Applicant
Subparagraph 2.a-2.b:	Against Applicant
Paragraph 3, Guideline E:	For Applicant
Subparagraph 3.a:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge