



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



In the matter of:)
)
) ISCR Case No. 19-01689
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

February 26, 2020

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Applicant has family members and a friend who are citizens and residents of Afghanistan. Since 2018, Applicant has worked for the U.S. Army in a war zone as a linguist and has won the praise of his leadership for his excellent services in a dangerous environment. Applicant’s evidence was sufficient to mitigate security concerns raised by his family circumstances. Based upon the record evidence as a whole, national security eligibility for access to classified information is granted.

Statement of the Case

On June 12, 2018, Applicant submitted a security clearance application (SCA) in connection with his employment. On August 29, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security*

Clearance Review Program (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on October 31, 2019, and elected to have his case decided on the written record in lieu of a hearing. He admitted three of the five SOR allegations, with comments for each, a narrative statement, and 11 pages of supporting documents.

Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), dated December 5, 2019, which included four proposed exhibits identified as Items 1-4. The FORM also included Department Counsel's request for administrative notice, identified as Item 5. This request is discussed below. A complete copy of the FORM was provided to Applicant. He was given the opportunity to file objections, submit a written response and documents to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. Applicant responded to the FORM with a brief written statement and two documents correcting a mistake in the record regarding his mother's name.

I have marked the attachments to Applicant's SOR answer as Applicant Exhibits (AE) A through H and the documents attached to Applicant's FORM response as AE I and J. I have re-marked Items 1 through 4 attached to the FORM as Government Exhibits (GE) 1-4, respectively. I have re-marked Item 5 as Hearing Exhibit 1. The case was assigned to me on January 15, 2020.

Request for Administrative Notice

Hearing Exhibit 1 is Department Counsel's request that I take administrative notice of certain facts about the Islamic Republic of Afghanistan (Afghanistan). Applicant did not object to this request. I have taken administrative notice of the facts contained in the request that are supported by source documents, which are official U.S. Government publications. These facts are summarized in my Findings of Fact, below.

Findings of Fact

I have incorporated Applicant's admissions in my findings of fact and have noted his denials and additional comments. Applicant's personal information is extracted from his SCA, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, the Department Counsel's FORM and administrative notice request, Applicant's response to the FORM, and the documentary evidence in the record, I make the following findings of fact:

Applicant was born in Afghanistan in 1981 and is presently 38 years old. In 1994, he and his family relocated to Pakistan as refugees. He earned a high school diploma in Pakistan in 2009 at the age of 28. In about 2009, Applicant met a woman online. The

woman was born in Afghanistan but had lived in the United States for many years, and holds dual citizenship with the U.S. and Afghanistan. Applicant and the woman married in Pakistan in 2010. Applicant's wife has three adult children. They were all born in the United States and hold dual U.S. and Afghan citizenships. Her middle child, age 32, lives in Afghanistan, and the two others, ages 34 and 30, reside in the United States. (GE 4 at 13.)

In January 2012, Applicant returned to Afghanistan while he waited for a visa to join his wife in the United States. After an interview at the U.S. Embassy in Kabul, he was granted an IR1 (spouse of a U.S citizen) visa. Applicant entered the United States in October 2013, about three years after his marriage. He and his wife separated in March 2017 and divorced in the United States in October 2018. He became a naturalized U.S. citizen in March 2018, at the age of 37. (AE A; GE 4 at 3, 13.)

Applicant possesses both a U.S. passport and an Afghan passport. He renewed his Afghan passport in 2015. He traveled to Afghanistan in March 2016 and April 2018 to visit his family there. He reported in his June 2018 U.S. Army counterintelligence security screening interview (Interview) that he does not plan to renounce his Afghan citizenship. He wants to keep that citizenship so that he can travel to Afghanistan on his Afghan passport without the necessity of applying for a visa and because he has emotional ties to Afghanistan due to his birth there. (GE 4 at 12, 14.)

In 2014, Applicant attempted to enlist in the U.S. Army because he could not find employment. However, he failed the Armed Services Vocational Aptitude Battery (ASVAB) exam. In 2018, he applied for his current position as a linguist because he was divorced. Prior to starting his work for the U.S. Army as a contractor in October 2018, he was "in a bad financial situation." (GE 4 at 5-6, 8, 11; AE F.)

Applicant's father is deceased, and his mother is a citizen and resident of Afghanistan. He has three sisters who are citizens and residents of Afghanistan. All three are married and have children. Applicant has other siblings who live outside of Afghanistan. Since 2015, he has sent about \$200 per calendar quarter to help support his mother, who is a "housewife." In his June 2018 Interview, Applicant reportedly said that if he worked for the U.S. Government in Afghanistan, he would be concerned about the safety of his mother and one of his three sisters in Afghanistan. He planned to deal with this concern by keeping his work there a secret. He also stated, however, that if his family was ever threatened, he would not betray his country. He further stated that he would never betray the U.S. or Afghanistan. (SOR answer at 2; GE 4 at 2, 8, 10, 11, 17.)

As of June 2018, when Applicant submitted his SCA and was interviewed by Army investigators, Applicant reported that he had weekly telephone contact with his mother and one of his sisters in Afghanistan. He also reported that he had monthly or quarterly telephone contact with his other two sisters in Afghanistan and monthly telephone contact with the daughter of his former wife, who resides in Afghanistan. (GE 4 at 17-19.)

Applicant has a friend who is a citizen and resident of Afghanistan. The friend is a senior executive officer in the Afghan National Army serving in the Afghan Special Forces. As of June 2018, Applicant had monthly contact with this friend. In his SOR answer, Applicant wrote that he keeps their friendship very professional and does not discuss his work with the friend. (GE 4 at 12, 16, 21; SOR answer at 3.)

The allegation in SOR ¶ 1.e sets forth security concerns about Applicant's statement in the Interview that his allegiance to the U.S. was the same as his allegiance to Afghanistan. In his SOR answer, he wrote that his response to the security screening question was misunderstood. He wrote that the security and national interest of the United States are his "priority." He also wrote that his allegiance to Afghanistan is just as the country of his birth. The reason he provided for declaring that the United States was his priority is that his future belongs in the United States. (SOR answer at 3.)

Character Evidence and Services Provided to the U.S. Army

Applicant provided with his SOR answer four character references and three certificates of appreciation, one from his employer and two from the Combined Security Transition Command – Afghanistan. A U.S. Air Force captain described Applicant as the "most valued contributor to our team" and that he has "the highest level of moral character" and "a very trustworthy American." He also noted that Applicant once put "himself at personal risk to physically escort the deceased remains" of coalition forces to safety after an attack in Kabul. A U.S. Army captain wrote that Applicant has been asked: "to call and work with high ministerial levels of the Afghan Government due to his ability to achieve results and be trusted." He praised Applicant's "great moral character." A captain in the British Army wrote that Applicant "has coordinated multiple security meetings with police commanders and high ranking officials across the security services in order to facilitate the successful implementation" of an important security program. A U.S. Army major and first sergeant co-wrote a memorandum in which they recommended Applicant receive a clearance. They wrote that Applicant "demonstrates his loyalty to U.S. military forces by providing interpretation and translation services to the U.S. military and coalition forces in support of counter-terrorism efforts in Afghanistan." They also wrote: "I trust [Applicant] with my life on every mission; his action in supporting the United States is a testament to his loyalty to our nation." Applicant's employer awarded him a Certificate of Appreciation that describes Applicant as one of its "exceptional employees." (AE B-H.)

Afghanistan

The Taliban is a serious challenge for the democratically elected Afghan Government in almost every province of Afghanistan. It considers itself the rightful government of Afghanistan, and it continues to fight for the withdrawal of foreign forces from the country. The U.S. State Department advises against travel to any area of Afghanistan due to terrorism, crime, civil unrest, kidnapping, and armed conflict. The State Department warns that the security situation in Afghanistan is extremely unstable and the threat to U.S. citizens remains critical. Extremist groups across the country utilize a variety of tactics to expand their territorial influence, disrupt governance, and create a public perception of instability. The presence of more than 20 terrorist organizations in

the region creates the largest concentration of terrorist and extremist organizations in the world. The country also experiences serious abuses of human rights as well as widespread disregard for the rule of law and official impunity for those responsible for human rights abuses.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See* ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline 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.

Applicant’s relatives in Afghanistan, his friend in the Afghan National Army, his admissions in his SOR answer, his FORM response, and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline:

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 or technology.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” necessary to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member or friend living under a foreign government. The totality of Applicant’s family and personal ties to a foreign country as well as each individual connection must be considered. The conditions in the foreign country, the nature of its government, and the presence of terrorists are important factors to be weighed. The facts in this case establish a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. AG ¶ 7(a) is established with respect to SOR ¶¶ 1.a-1.d.

The allegation in SOR ¶ 1.e is the result of a misunderstanding during an interview. Given Applicant’s clarifying explanation in his Answer, the facts surrounding this allegation do not give rise to a security concern under Guideline B.

AG ¶ 7(b) is also established. Applicant’s connections to foreign persons create a potential for a conflict of interest between Applicant’s obligation to protect classified or sensitive information or technology and his desire to help a foreign person by providing that information or technology.

The following mitigating conditions are potentially applicable:

AG ¶ 8(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;

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 interest in favor of the U.S. interest; 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.

AG ¶ 8(a) is not established. It cannot be concluded with the requisite degree of confidence that it is unlikely that Applicant 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. Applicant recognizes that he must keep his work for the U.S. Army a secret from his family members and others to avoid the risk of endangering his family members. Applicant’s success at maintaining that secret is impossible to predict.

Since 2018, Applicant has worked for the U.S. Army and with NATO forces in a dangerous war zone in which he has made a significant contribution to U.S. national security. His actions constitute important evidence that his ties and sense of obligation to the United States are sufficiently strong that he can be expected to resolve any conflict of interest in favor of the U.S. The Appeal Board:

has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006); ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006); ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report attempts at coercion or exploitation. *Id.*

When an "applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S., [his behavior] constitute[s] important evidence that [his] ties and sense of obligation to the U.S. could be sufficiently strong that he [could] be expected to resolve any conflict of interest in favor of the U.S. Directive ¶ E 2.8(b). See ISCR Case No. 05- 03846 at 6 (App. Bd. Nov. 14, 2006.) (Applicant's work as an interpreter in Afghanistan occurred 'in the context of dangerous, high-risk circumstances in which [he] made a significant contribution to the national security.') See also ISCR Case No. 04-12363 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 (App. Bd. Feb. 5, 2008)."

ISCR Case No. 06-25928 at 3-4 (App. Bd. Apr. 9, 2008) (footnotes omitted). Under this applicable authority, AG ¶ 8(b) is established.

AG ¶ 8(c) is not established with respect to the Afghan relatives alleged in the SOR. Applicant's contacts and communications with these relatives are not casual or infrequent so as to create little likelihood that those relationships could create a risk of foreign influence or exploitation. With respect to Applicant's friend who is a Special Forces officer in the Afghan National Army, the record is incomplete as to the length and history of their relationship. However, the fact that Applicant maintains monthly contact with this person supports the conclusion that their relationship is not sufficiently casual to establish mitigation under AG ¶ 8(c).

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for national security eligibility and a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d). These factors are: (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall, commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case, especially the security significance of Applicant's exemplary service since 2018 in the U.S. national interests. The security concern set forth in AG ¶ 6 regarding an applicant with a divided allegiance due to his foreign contacts is a serious matter in cases such as this. I have weighed the important role linguists play in a foreign war zone and the potential for risk to U.S. national security if a linguist could be coerced into helping terrorist organizations opposed to U.S. interests.

After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his multiple contacts and connections with citizens and residents of Afghanistan.

Formal Findings

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a-1.e:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interests of the United States to grant Applicant national security eligibility for access to classified information. Clearance is granted.

John Bayard Glendon
Administrative Judge