



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



In the matter of:)
)
) ISCR Case No. 19-03041
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 26, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on January 4, 2020, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 10, 2020. The hearing was delayed because of COVID-19 and Applicant’s presence in Afghanistan. The case was reassigned to me on May 5, 2021. The hearing was convened as scheduled on May 19, 2021.

Evidence

Government Exhibit (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant’s Exhibits (AE) 1 through 6, which were admitted without objection.

On my own motion and without objection, I take administrative notice of certain facts about Afghanistan as contained in official U.S. Government documents (Hearing Exhibit II). Of particular note is the significant threat of crime, terrorism, civil unrest, kidnapping, and armed conflict. There are also ongoing human rights problems in Afghanistan.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He is applying for a security clearance for the first time. He is a high school graduate. He is married without children. (Transcript (Tr.) at 39-40; GE 1)

Applicant was born in Afghanistan to Afghan parents. He worked under dangerous conditions in Afghanistan as a linguist in support of the U.S. mission from 2008 to 2012. Because of his work, he was eligible for a special immigrant visa. He immigrated to the United States in 2012, and he became a U.S. citizen in 2018. He married his wife in Afghanistan in 2014. She immigrated to the United States and is a U.S. permanent resident. (Tr. at 26, 29, 37; Applicant's response to SOR; GE 1, 2)

Applicant's parents, six siblings, and parents-in-law are citizens and residents of Afghanistan. Applicant's parents have been approved to immigrate to the United States. He provides them about \$700 to \$800 per month in support. He hopes they will arrive within the next few months. One of his brothers also worked in support of the U.S. mission in Afghanistan and has applied to immigrate to the United States. The rest of Applicant's siblings hope to eventually immigrate to the United States. (Tr. at 26-32; Applicant's response to SOR; GE 1, 3, 4; AE 1, 2)

Applicant's father-in-law is a retired senior officer in the Afghan military. Applicant has not had any contact with his father-in-law since 2018. His wife maintains contact with her parents, but Applicant asked her not to tell them that he is back in Afghanistan working for a U.S. defense contractor. (Tr. at 27, 33-35; Applicant's response to SOR; GE 1, 3, 4)

Applicant has extended family members in the United States, including uncles and his wife's sister. He returned to Afghanistan in 2019 to work in support of the U.S. mission, and he is currently working there. He expressed his undivided loyalty to the United States. He credibly testified that his family in Afghanistan could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so (Tr. at 39-43)

Applicant called two witnesses, and he submitted documents and letters from U.S. personnel attesting to his outstanding service as a linguist in support of combat missions, both from 2008 to 2012, as well as during his current time in Afghanistan. One witness worked with Applicant in Afghanistan in the 2008 to 2012 period, maintained contact with him through Facebook, and is again working with him in Afghanistan. (Tr. at 19-25; AE 3-6) A U.S. military officer wrote in 2019 of Applicant:

He has shown exemplary support by his willingness to put the safety of others and the mission first He has been placed in unique situations that required decision making in a stressful environment, allowing him to build comradery with US military, Coalition Forces, and the Afghanistan partners by displaying his reliability and trustworthiness. (AE 3)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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;
- (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; and
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant’s parents, six siblings, and parents-in-law are citizens and residents of Afghanistan. His father-in-law is a retired senior officer in the Afghan military. The potential for terrorist and other violence against U.S. interests and citizens remains high

in Afghanistan, and it continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. 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 is potentially applicable:

(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.

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 is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He credibly testified that his family in Afghanistan could not be used to coerce or intimidate him into revealing classified information. The Appeal Board has stated that such a statement, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security. *See, e.g.,* ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008). In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. *See, e.g.,* ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the 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). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

Applicant worked under dangerous conditions as a linguist in support of the U.S. mission from 2008 to 2012, which earned him a special immigrant visa. He returned to Afghanistan and is again supporting the U.S. military. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

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 Guideline B in my whole-person analysis.

Applicant's work with the U.S. military in Afghanistan earned him a special immigrant visa. He is once again in Afghanistan in support of the U.S. military. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case." ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). The complicated state of affairs in Afghanistan places a significant burden of persuasion on Applicant to demonstrate that his family members in Afghanistan do not pose an unacceptable security risk. He has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence 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: For Applicant

Subparagraphs 1.a-1.d: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge