



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



In the matter of:)	
)	
)	ISCR Case No. 20-02706
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

07/18/2022

Decision

CERVI, Gregg A., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 21, 2019. On December 16, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B, Foreign Influence. The DCSA CAF acted under Executive Order (Exec. Or.) 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 on June 8, 2017.

Applicant responded to the SOR on December 31, 2020, and requested a hearing before an administrative judge. The case was assigned to me on October 26, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 18, 2022, scheduling the hearing for April 14, 2022. The hearing was held via video teleconference, as scheduled. Government Exhibits (GE) 1 through 4 were admitted into

evidence without objection. Applicant testified and submitted no exhibits at the hearing. The record was held open until April 22, 2022, for the parties to submit any additional exhibits. Applicant submitted Exhibits (AE) A through H, which were admitted into evidence without objection. (Note: Applicant submitted nine pages as email attachments, which comprised eight complete documents). DOHA received the hearing transcript on April 25, 2022.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Afghanistan. (HE 1) The facts administratively noticed are summarized in the Findings of Fact, which I supplemented with more timely information from online U.S. Government and public resources addressing generally accepted facts about the historic and current status of Afghanistan.

Findings of Fact

Applicant is a 35-year-old prospective employee of a defense contractor, applying for a position as an interpreter/translator. He was born in Kabul, Afghanistan, and graduated from high school in 2008 in Helmand Province, Afghanistan. He completed some college coursework. He married in Kabul, Afghanistan, in June 2013, and has two children; ages four and seven. He has been employed as a semi-truck driver since February 2021.

After the Soviet Union invasion of Afghanistan and civil war, Applicant was smuggled out of Afghanistan via Pakistan in about 1999, to work with his uncle in a tailor shop in Iran. He lived in Iran for about one year when he fell ill and returned to Afghanistan in 2000 to live with his parents, and then as a refugee in the United Nations Refugee Resettlement program. From 2008 to 2011, Applicant worked at a joint U.S./UK base in Lashkar Gah, the capital of Helmand Province, Afghanistan. First he worked for the British Foreign Commonwealth Office as a management assistant where he supervised maintenance workers, then in 2011, he worked for the U.S. Marine Corps and another government agency (OGA) as a political advisor and translator/interpreter. He often accompanied U.S. personnel in dangerous meetings with tribal leaders. He lived in town with his family until he was recognized and threatened by a village elder and Taliban supporter. Because of the threat to his life, he was moved to on-base housing for his safety. The joint base closed in 2013, and the Marines and OGA personnel at the base strongly supported his immigration to the U.S.

In December 2013, Applicant and his spouse relocated to the United States under a Special Immigrant Visa (SIV) program for persons employed in Afghanistan by U.S. government or by the International Security Assistance Forces (ISAF). An SIV under this program is available to those who have provided documented faithful and valuable service to the U.S. government or ISAF, and have experienced or are experiencing an ongoing serious threat as a consequence of their employment. (<https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-afghans-employed-us-gov.html>) Applicant became a naturalized U.S. citizen in August 2019, and his spouse became a citizen in May or June, 2019. They renounced their Afghan citizenship and enthusiastically swore allegiance to the United States.

The SOR alleges Applicant has seventeen foreign contacts and interests in Afghanistan. It alleges his mother, father, six sisters, two brothers, and mother and father-in-law are citizens and residents of Afghanistan. (SOR ¶¶ 1.a to 1.f) It also alleges his father, brother, four uncles, and father-in-law have significant military and intelligence ties to the former Afghan military and government. (SOR ¶¶ 1.g to 1.l) Finally, it alleges that Applicant owns property in Afghanistan, and provided financial support demanded by his father, and to his brother, father-in-law, and brother-in-law, all citizens of Afghanistan. (SOR ¶¶ 1.m to 1.q) Applicant admitted all of the allegations except for owning property and providing financial support to his father under demand, however he does not deny financially supporting his father. (SOR ¶¶ 1.m and 1.n)

Applicant's mother, father, three sisters, and his youngest brother are citizens of and live in Kabul, Afghanistan. His father, a former colonel and intelligence officer in the Afghan Army, is retired and sick at home with deep shrapnel wounds. He learned of Applicant's work with the Marines because they lived together. Applicant testified that his father worked for the Taliban at one time, but he refused to fight the Northern Alliance and "snuck out of Kabul."

Three weeks before the hearing, the Taliban searched his family's home for uniforms or other signs of military involvement. This was part of a Taliban sweep of homes in Kabul after the U.S. withdrawal. His father told them he retired from the government three years ago, and was not well. Applicant kept daily telephonic contact with his family during the most turbulent times, and now talks with them about weekly or bi-weekly. His spouse spoke to her family in Afghanistan weekly, and she traveled to Afghanistan with her children from March to September 2019, to visit family. About two weeks before the hearing, his in-laws were forced to move to Pakistan for survival from the Taliban. His father-in-law previously worked for the Afghan army.

Since no one in his parents' household is able to work since the fall of the Afghan government, Applicant has provided financial support to his family since 2013 out of loyalty and familial obligation. In the last five years, he sent about \$4,000 to \$5,000 per year to his immediate family. Since 2021, he sent about \$10,000. Currently, he sends monthly support to his father of about \$300 to \$1,000, and at one time sent \$4,000 to help them move to Kabul. He sent about \$8,000 to his father-in-law over the past eight years. He testified that if his family is caught receiving money from an American citizen, "there will be consequences."

Applicant has a brother that was a former Afghan intelligence officer who worked with U.S. forces and was evacuated to Abu Dhabi, UAE, when the Taliban took control. His brother does not work or leave his hotel. He speaks to his brother in Abu Dhabi regularly. He has two uncles who served as officers in the Afghan military (one in intelligence), but they retired and may still live in Afghanistan. Applicant does not have regular contact with them. He has another uncle who was a colonel in Afghan intelligence. His current work status is unclear. Applicant's spouse visited with him when she went to Afghanistan. Another uncle was a former brigadier general in the Afghan army special forces, who is in hiding from the Taliban. Applicant does not have regular contact with him.

Applicant has six sisters, all of whom live in Afghanistan. Three were in high school and college before the Taliban took control, but they now live with his parents in Kabul. Another is a stay-at-home mother of four children, one is married to a U.S. cab driver in an arranged marriage, and one is a housewife. He speaks to his oldest sister about once a month, but has limited contact with his other sisters. One sister, not alleged in the SOR, lived in Iran when Applicant lived there, but now works as a nurse in Afghanistan and has worked for a U.S. relief organization.

Applicant has no assets overseas, and rents an apartment in the U.S. In 2009, he and his friends purchased property in Afghanistan to build on. He paid about \$5,000. He transferred the property to his father before leaving Afghanistan, and no longer holds an interest in it. Applicant earns about \$72,000 - \$90,000 per year as a truck driver, and has put a deposit down to purchase his own a semi-truck. Applicant stated that he owes his life to the U.S. Marines that he worked with and loves them more than his brothers. He stated that the Marines treated him with respect and trusted him. His testimony at the hearing was sincere and credible.

Applicant provided several strong letters of recommendation for his SIV and immigration to the U.S. from American military and civilian government officials he worked with in Afghanistan. He also received a Certificate of Commendation from the U.S. Marine Corps.

Afghanistan

Afghanistan is a country in Southwestern Asia that is approximately the size of Texas (249,935 square miles). Pakistan borders it on the east and the south. Iran borders it on the west and Russia to the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries.

Afghanistan has an unstable government led by the Taliban; a brutal, oppressive, militia group with longstanding animosity to the United States; and is a haven for other terrorist groups such as Al-Qaeda, AQIS, and ISIS-K. The Taliban took control of the Afghan capital after the U.S. and NATO forces precipitously withdrew from the country, ending on August 30, 2021. Following the effective collapse of the government of the Islamic Republic of Afghanistan during the 2021 Taliban offensive, the Taliban declared the country an Islamic Emirate. A new caretaker government was announced on September 7, 2021. The Taliban and terrorist organizations within Afghanistan have a history of extreme violence, human rights abuses, oppression against minorities and women, lawlessness, and corruption. With a strong anti-western bias, all western individuals and Afghans associated with the U.S. or NATO governments are at critical risk of becoming targets for terror groups and/or the Taliban. Afghanistan is considered an exceptionally dangerous country.

Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union withdrew from Afghanistan, fighting continued among the various ethnic, clan, and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic government took power in 2004 after a popular election.

On 14 April 2021, the NATO Secretary General and President Biden agreed to withdraw military troops from Afghanistan by September 11, 2021. Soon after the withdrawal started in May 2021, the Taliban launched an offensive against the Afghan government, quickly advancing in front of collapsing Afghan government forces. On August 15, 2021, as the Taliban once again controlled a vast majority of Afghan territory, they re-captured the capital city of Kabul, and many civilians, government officials and foreign diplomats were evacuated. Afghan President Ghani fled Afghanistan that day.

Western nations have suspended most humanitarian aid to Afghanistan following the Taliban's takeover of the country in August 2021 and the World Bank and International Monetary Fund also halted payments. In October 2021, more than half of Afghanistan's 39 million people faced an acute food shortage. On November 11, 2021, Human Rights Watch reported that Afghanistan was facing widespread famine due to an economic and banking crisis.

A U.S. State Department Level "4" Travel Advisory remains in effect. The State Department warns U.S. citizens against travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens.

Law and 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.

National security eligibility 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 a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 1(d).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 has three conditions that could raise a security concern and may be disqualifying 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 is a U.S. citizen who maintains regular contact with his parents and at least one sibling who are residents and citizens of Afghanistan, and his brother, a former Afghan intelligence officer, who escaped Afghanistan and currently resides as a refugee in the UAE. He sends money to his family who is in dire need of assistance after the collapse of the Afghan government. His spouse, a U.S. citizen from Afghanistan maintains regular contact with her parents who recently fled Afghanistan in fear for their safety, and reside in Pakistan. Applicant has family members who are former Afghan senior military and intelligence officers, and are living in Afghanistan under threat from the Taliban. His parents' home was recently searched by Taliban forces seeking Afghan military personnel.

The mere possession of close family ties with one or more family members living in Afghanistan is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03- 02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Afghanistan has an unstable government led by the Taliban, a brutal, oppressive, militia group with longstanding animosity to the United States, and is a haven for other terrorist groups such as Al-Qaeda, AQIS, and ISIS-K.

Applicant's relationship with his relatives who are citizens and residents of Afghanistan create a potential conflict of interest because of the potential for pressure to be placed on his family living in Afghanistan in an effort to cause Applicant to compromise classified information. These relationships and Afghanistan's political status create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Applicant received an SIV to travel to the United States based on his work in a hostile environment for the U.S. Marine Corps and OGA while in Afghanistan. There have been threats made against him and his family while he assisted U.S. interests. Finally, his spouse is a former citizen of Afghanistan and maintains regular contact with her family who fled Afghanistan for Pakistan. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, 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.

Based on the record, there is insufficient evidence to fully apply any of the mitigating conditions. Applicant has close and continuing contact with his parents and a sibling, who are citizens and residents of Afghanistan, and his brother, a former intelligence officer who fled Afghanistan for the UAE. He provides financial support for his family, and he is related to former senior Afghan military and intelligence officers. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States."

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant was born in Afghanistan, and served honorably and admirably in supported of the U.S. and NATO missions in Afghanistan, sometimes putting his life in jeopardy to assist the U.S. Marine Corps. His loyal service to the U.S. enabled him to receive an SIV and immigrate with his spouse to the United States where he has become a productive, faithful, patriotic American citizen.

However, Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Afghanistan. Applicant's parents, siblings, and other family members currently live in Afghanistan, generally in fear of the brutality of the Taliban regime. They are at a heightened risk from terrorists and the Taliban because of their association with the former government and military. Applicant has been specifically targeted and threatened because of his service in support for U.S. and coalition forces. His relatives remaining in Afghanistan are potential targets of terrorists and the Taliban, and Applicant's potential access to classified information or work with the U.S. Government could theoretically add risk to his relatives living in Afghanistan, which could be leveraged against him.

Applicant's patriotism is not being questioned, rather he has not shown that his ties to the U.S. outweigh his familial interests in Afghanistan. Applicant's work with U.S. and

coalition forces in Afghanistan and his glowing letters of recommendation for an SIV weigh in his favor. However, these factors are insufficient to overcome the foreign influence security concerns raised above. Those concerns have not been sufficiently mitigated.

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.

A Guideline "B" decision concerning Afghanistan must take into consideration the geopolitical situation and risks posed for those living there. Afghanistan is an unstable and dangerous place because of violence and instability from the Taliban and terrorist organizations. Taliban and militias continue to threaten Afghan citizens with ties to the former government, the interests of the United States, U.S. armed forces, and those who cooperate and assist the United States. Applicant's immediate family in Afghanistan and in-laws, now in Pakistan, are subject to governmental and terrorist activity that puts Applicant at significant risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Applicant is a credible and sincere American citizen who happens to have close ties to and/or supports family members in Afghanistan. His family's former professional positions in Afghanistan, and Applicant's support for and citizenship in the U.S., may place them in danger. Applicant's interests in the United States do not overcome the foreign influence concerns.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the foreign influence security concerns raised in the SOR and described above. Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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
Subparagraph 1.m:	For Applicant
Subparagraphs 1.a - 1.l, and 1.n-1.q:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge