



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 06-10539
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel,
James Duffy, Esquire, Assistant Department Counsel
For Applicant: *Pro Se*

February 12, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the foreign influence security concerns arising from his parents' dual citizenship with Afghanistan and the United States, and his father's important position in the Afghani government. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (eQIP)¹ on August 3, 2005. On August 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline B (Foreign Influence).²

¹ Electronic Questionnaires for Investigations Processing.

² 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

Applicant answered the SOR on October 4, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on November 28, 2007. DOHA issued a notice of hearing on December 5, 2007, and I convened the hearing as scheduled on January 9, 2008. The government offered exhibits (GE) 1 through 3, which were received without objection. GE 3 was not admitted, but considered for administrative notice purposes only.³ Applicant testified on his own behalf and submitted no exhibits. DOHA received the transcript of the hearing (Tr.) on January 17, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated October 4, 2007, Applicant admitted all SOR allegations with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following findings of fact.

Applicant is a 24-year-old consultant for a federal contractor. He has never been married and has no children. His paternal and maternal grandparents and his parents were born and raised in the Islamic Republic of Afghanistan (Afghanistan). His paternal grandparents immigrated to the United States around 1983 (Tr. 84). His grandfather had an import and export business in Afghanistan. His grandmother was a homemaker. Both of them passed away in the United States and are buried in a multi-family cemetery plot in the United States (Tr. 32). Applicant, his parents, brother, and other relatives have space reserved for them in the family cemetery plot, and have expressed their desire to be buried in the United States. His maternal grandfather died in Afghanistan, and his maternal grandmother immigrated to the United States around 1988. She has been a homemaker all her life.

Applicant's father is 60 years old and his mother is 45 years old. From 1978 to 1987, his father held a supervisory position in an important agency of the government of Afghanistan (Tr. 85). Around 1987, the Taliban came to power in Afghanistan. Afraid of the new regime, his parents immigrated first to India for a short period of time, and then to France where they lived from 1988 to 1992. In 1992, they immigrated and settled in the United States. Applicant's father was unemployed from 1992 to 2000. Around 2000, his father began working as a language consultant and taught French and Farsi Dari (Afghanistan's Persian dialect). Applicant's parents became naturalized U.S. citizens in December 2000. Applicant and his brother were minors and acquired U.S. citizenship at

revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

³ Department Counsel's November 19, 2007 motion asked that I take administrative notice of certain facts concerning the government of Afghanistan (Tr. 92-93). The request and the attached documents were not admitted into evidence but were considered and included in the record as GE 3 for Identification.

the same time. His parents and brother are dual citizens of Afghanistan and the United States.

After September 11, 2001, Applicant's father was contacted by old friends and co-workers within the government of Afghanistan and he began working for the Afghani government against the Taliban (Tr. 89). Since 2003, Applicant's father has been working in an important position for the government of Afghanistan. Applicant testified his parents own no property outside of the United States. He claimed all of their investments and property is located in the United States (Tr. 32). Their permanent residence is in the United States; however, they currently live in a European country due to his father's job. Applicant's father travels at least once a year to Afghanistan and has frequent contact with important people within the Afghani government.

Applicant's father was educated in France where he received a juris doctor and a doctorate degree (Tr. 33). Applicant testified his father's job is dangerous and he is placing his life at risk by working for the Afghani government. He does it because he feels obligated to help fight terror and the Taliban. He believes his father would never compromise the United States because he considers himself a U.S. citizen, has stated his intention to resign his job for the government of Afghanistan if he is asked to renounce his U.S. citizenship, and he plans to retire in the United States. Applicant further believes his father would never compromise his position.

Applicant immigrated with his parents to the United States at age nine. Thereafter, he was raised and educated in the United States. Although Applicant became a naturalized U.S. citizen when his parents were naturalized, he formally applied for his U.S. citizenship as soon as he became of legal age (Tr. 90). In May 2005, he received a bachelor's degree in electrical engineering and economics. He was hired by a federal contractor in August 2005, and had interim access to classified information until August 2006 (Tr. 7-8). He enrolled in law school during the fall of 2007, and is currently working part-time for another defense contractor (Tr. 6).

Applicant's younger brother is a dual citizen of the United States and Afghanistan. He lived with his parents in Europe from 2003 until the fall of 2007 when he started college in the United States. He has possession of both countries' passports (Tr. 63-64).

Applicant has a large extended family – his father has eight siblings and his mother has 12 siblings, all of whom were born and raised in Afghanistan (Tr. 65-76). However, Applicant testified he no longer has relatives living in Afghanistan. All of his relatives immigrated either to France or the United States. Applicant has three uncles and one aunt whom have been living in France for approximately 20 years. Two of his uncles became naturalized French citizens, and relinquished their Afghani citizenship in the process. One is a U.S. citizen living in France. His relatives living in France were educated there, and have families and own businesses in France. The rest of Applicant's relatives are residents of the United States. It is not clear whether all of his parent's siblings living in the United States are naturalized U.S. citizens; however,

Applicant believes most of them are citizens or are in the process of applying for U.S. citizenship. Applicant has frequent contact with his relatives in the United States.

Applicant maintains casual contact with his relatives in France and visits them approximately once a year. He visits relatives in France when he visits his parents in Europe, and during special occasions such as his cousin's wedding in 2005. Applicant claimed he does not contact his relatives in France telephonically or by letter. Most of his contacts with them are through Internet social networking websites (Tr. 67). One of Applicant's uncles living in France owns real estate property in the United States. Applicant manages his uncle's real estate property in the United States. He and his uncle opened a joint U.S. bank account to facilitate his managing his uncle's property (GE 2).

Applicant has very strong ties of affection and obligation towards his parents (Tr. 49). He and his brother visit them two to three times a year, usually during the Christmas and summer holidays. Applicant and his mother opened a joint account in the United States. She deposits money in the account so that Applicant can pay for his and his brother's education, living expenses, and for him to manage his parent's home (GE 2).

During May-July 2005, Applicant traveled with his father to Afghanistan and stayed there for two weeks. His father wanted Applicant to see first hand the living conditions in Afghanistan, and to impress on him how nice it is to live in the United States (Tr. 79). For security reasons, whenever Applicant's father travels to Afghanistan he travels anonymously, without official escort or protocol (Tr. 81). After visiting other countries, Applicant believes the United States offers the best opportunities for a first generation immigrant. He considers the United States the best place in the world to live (Tr. 37).

Applicant believes his relationship with his parents should not raise a concern for several reasons; Afghanistan and the United States have similar interests and are fighting the war on terror and drugs; his father believes in democracy, free markets, and civil liberties (Tr. 61); his father is doing all he can to help the people of Afghanistan fight terror and the war on drugs; and Afghanistan's economic and industrial situation would not allow the country to use any information Applicant could acquire.

I take administrative notice of the following facts. Afghanistan was controlled by Islamic extremists (the Taliban) from around 1990 to 2001. The Taliban committed serious human rights violations and atrocities against minority populations and women, and provided sanctuary to Osama Bin-Laden, Al-Qa'ida, and other terrorist organizations. A new democratic government took power in 2004, assisted by the United States and an International coalition. Despite the new democratic government, Afghanistan's human rights record has remained poor because of the continuing insurgency and the weakness of the central government. The government has not been able to develop and sustain the rule of law within its borders. This has allowed non-state actors, hostile states, terrorist organizations, and insurgents to continue to operate in

Afghanistan. International terrorist groups conduct intelligence activities as effectively as capable state intelligence services. These actions endanger the international community and its citizens, and threaten U.S. national security.

Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁴

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's controlling adjudicative goal is a fair, impartial and common sense 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 access to classified information will be resolved in favor of national security."⁵ In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ *Egan*, *supra*, at 528, 531.

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 10865 provides that 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

Under Guideline B, the government’s concern is: “foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.” AG ¶ 6.

AG ¶ 7 sets out nine conditions that could raise a security concern and may be disqualifying. Two disqualifying conditions are particularly relevant to this case:

- (a) contact 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 sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁶

⁶ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant's father and mother were born and raised in Afghanistan, and they continue to be citizens of that country. Moreover, from 1978 to 1987, Applicant's father worked for the government of Afghanistan in an important position. Since 2003, Applicant's father has been working again for the government of Afghanistan in another important position. He and his wife travel at least once a year to Afghanistan. Applicant has strong ties of affection and/or obligation with his parents. He has frequent contacts with and visits his parents at least twice a year. Applicant's strong ties of affection and/or obligation with his parents potentially create a risk of foreign pressure or attempted exploitation because there is the possibility that Afghan terrorist groups, insurgents, and hostile states working within Afghanistan may exploit the opportunity to obtain intelligence, classified, or economic information about the United States.

Applicant's relationship with his parents also create a potential conflict of interest because his relationship is sufficiently close to raise a security concern about his desire to help his parents or the government of Afghanistan by providing sensitive or classified information.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

There are six Foreign Influence Mitigating Conditions under AG ¶ 8 that are potentially applicable to these disqualifying conditions. After considering the totality of the facts and circumstances in Applicant's case, I conclude that none of the mitigating conditions fully apply. Applicant has a very close relationship of affection and/or obligation with his parents. From 1978 to 1987, his father worked in an important position for the government of Afghanistan. In 2001, he again began working for the government of Afghanistan. Since 2003, he has held an important position within the Afghani government. Applicant's parents live in Europe, but they travel to Afghanistan as part of his government-related job. Considering Afghanistan's government instability, his father's position in the Afghani government, and the different terrorist organizations working within Afghanistan, Applicant's evidence is insufficient to show he would not be placed on a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States. Mitigating conditions AG ¶¶ 8(a) and (c) do not apply.

AG ¶ 8(b) partially applies. Applicant has been in the United States since age nine and he was educated in the United States. He formally applied to become a naturalized U.S. citizen as soon as he reached legal age. He has no financial, business, or property interests in Afghanistan. He has been to Afghanistan only once in his life, to learn first-hand about how people in Afghanistan live and to understand how good are the living conditions and opportunities in the United States. Most of Applicant's relatives live in France or in the United States.

Notwithstanding, Applicant has a very close relationship of affection and/or obligation with his parents. His father works in an important position for the government of Afghanistan and he may be placed in a position of having to choose between his affection and loyalty to his parents and his loyalty to the United States. Under the circumstances of this case, Applicant's mitigating information is insufficient to convince me that he can be expected to resolve any conflict of interest in favor of the United States' interest.

In deciding whether Applicant's family members are in a position to be exploited, I considered Afghanistan's form of government.⁷ Afghanistan is an Islamic republic with a recently established and weak democratic government. Its government has a poor record of protecting human rights and has been unable to provide good governance and to sustain the rule of law within its borders. Terrorist groups, non-state actors, and hostile states conduct effective intelligence activities and operate within its borders. Their actions threaten the international community and its citizens and threaten the national security of the United States.

Considering the totality of the circumstances, the evidence shows it is likely Applicant will be placed in a position of having to choose between the interests of his parents and the interests of the United States.

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 the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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 the facts and circumstances surrounding this case. Applicant has been in the United States for 15 years and a naturalized U.S. citizen for around seven years. He was educated in the United States and his grandparents lived in the United States for

⁷ The focus of the analysis is primarily on its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States. Terrorism and crime are also factors to be considered.

approximately 25 years. His parents are dual citizens of the United States and Afghanistan. He has no relatives living in Afghanistan. His parents own property only in the United States and they intend to retire in the United States. Applicant worked for two defense contractors and had interim access to classified information at the secret level for one year. There is no evidence that Applicant has ever compromised classified information or that he has failed to comply with rules and regulations concerning the protection of classified information.

After carefully considering Applicant's circumstances, including his father's important position with the Afghani government, I conclude he is in a position where he may be induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or he may be vulnerable to pressure or coercion by his father, the government of Afghanistan, or one of the many terrorist organization operating in Afghanistan.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the concerns arising from his 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:	AGAINST APPLICANT
Subparagraphs 1.a-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's security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge