



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 06-20204
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro se*

February 29, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 27 October 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B.¹ Applicant answered the SOR 14 November 2007, and requested a hearing. DOHA assigned the case to me 10 January 2008, and I convened a hearing 13 February 2008. DOHA received the transcript (Tr.) 22 February 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted SOR allegations 1.a. and 1.h. Accordingly, I incorporate his admissions as findings of fact. He denied SOR allegations 1.b. through 1.g. He is a 53-year-old linguist employed by defense contractors since March 2003. He seeks to retain the security clearance he obtained in March 2003.

Applicant was born in Afghanistan in March 1954. He immigrated to the U.S. in February 1977, became a legal permanent resident (LPR), and was naturalized as a U.S. citizen in January 1984. He obtained his most recent U.S. passport in December 2004. Applicant's wife, who he married in October 1988, is an LPR of the U.S. She is eligible for her U.S. citizenship, but she failed the language portion of the citizenship test and is applying to retake it. Applicant and his wife have five children, all native-born U.S. citizens. They all reside in the U.S. Applicant owns his home in the U.S. and all his financial interests are here.

Applicant's siblings include a brother, sister, and half brother. His brother is a resident citizen of Afghanistan, employed as a farmer. His sister is a dual citizen of Afghanistan and Germany, residing with her husband in Germany. His half-brother is a citizen of Afghanistan, permanently residing in Australia.

Applicant's wife has a number of siblings and step-siblings who are resident citizens of Afghanistan. Except for one brother who recently retired as a construction supervisor for the Interior Ministry, none of these siblings has any connection to the Afghan government. In addition, Applicant's contacts with his siblings-in-law are limited, as are his contacts with his own siblings. Applicant also has a casual friendship with a Pakistani doctor who he met about 10 years ago. They have visited 4-5 times in those 10 years, but not since September 2005.

Between March 2003 and July 2005, Applicant was deployed to Afghanistan as a contract linguist in support of Operation Enduring Freedom (OEF). During most of that time, he worked as a political advisor, interpreter, and translator for a Provincial Reconstruction Team (PRT), and was designated the lead linguist in the PRT. He also worked in the field in direct support of Army operations in dangerous situations. Put bluntly, he is one of the entry points for the classified intelligence that comes to U.S. forces from Iraqi insurgents and informants. He has been uniformly praised by his employer, his senior civilian supervisors, and his Army supervisors (senior officers and junior officers alike) for his patriotism, his personal bravery in "red zones," the quality of his translations and interpretations in Pashto, Farsi, and several other languages, and the cultural nuances that he is able to bring to interrogations. His cultural knowledge and skill at putting informants at ease increases the likelihood that he will obtain accurate information (G.E. 2).

Applicant's current job requires him to recruit other linguists for deployment to Afghanistan. His co-worker considers him honest and trustworthy, as do his friend and neighbor.

Afghanistan is an Islamic Republic and emerging democracy. With the support of the U.S. and other nations, the new government endeavors to build a new system of government and to rebuild the country's infrastructure. The Army and police force are well trained. The government continues to face significant challenges from insurgents and terrorist organizations supported by the ousted Taliban as well as Al Qa'ida, but actively seeks to eliminate both with the assistance of the U.S. and NATO. The new government is also working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community and has signed a "Good Neighbor" declaration with six nations bordering it and promotes regional cooperation. The U.S. supports the emergence of a broad-based government in Afghanistan. Afghanistan continues to seek U.S. support as it moves forward towards democracy and stability. It is not known to be an active collector of intelligence information.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.³ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.⁴

In this case, the government failed to establish a case for disqualification under Guideline B. Considering first the country involved, Afghanistan and the U.S. enjoy good foreign relations. It has not been demonstrated that the Afghan government is actively engaged in the collection of U.S. intelligence such that would make Applicant or his family likely targets for coercion, duress, or influence. The government's evidence explains the links to terrorism that are on-going in Afghanistan and the way that those terrorist organizations operate, the increase in terrorism, and the increase in membership in terrorist groups. Several of the groups that are frequently in the news, for example the Taliban and Al Qa'ida, operate in Afghanistan and practice terrorist acts against Afghans and against U.S. forces as well as indiscriminate violence in order to draw attention to themselves and increase their membership and their power. There is no indication they use terrorism to gain access to U.S. information.

Considering Applicant's circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited family contacts in Afghanistan. None of Applicant's family members have any direct connection to the Afghan government, and there is nothing in the past connections of his brother-in-law (now retired) or other siblings-in-law to raise a concern over protecting classified information. Further, Applicant has been in the U.S. more than 30 years. His wife and children are here. All his financial interests are here. His contacts with family members in Afghanistan and his friend in Pakistan range from nearly non-existent to casual, and there is nothing in the circumstances of their being in Afghanistan or Pakistan, or in Applicant's contacts with them, to heighten the risk that he could be impelled or

³Revised Adjudicative Guidelines, ¶ 6.

⁴Revised Adjudicative Guidelines, ¶ 7.(a).

compelled to provide protected information to Lebanon. Further, Applicant has served with U.S. forces in Afghanistan with distinction, essentially producing classified intelligence for those forces and protecting U.S. interests.⁵ Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his family members in Afghanistan or his friend in Pakistan. Accordingly, I resolve Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant
Subparagraph e:	For Applicant
Subparagraph f:	For Applicant
Subparagraph g:	For Applicant
Subparagraph h:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge

⁵A factor the Appeal Board has recently acknowledged as a legitimate factor for consideration in Guideline B cases. See, ISCR Case No. 07-00034 (5 February 2008); ISCR Case No. 04-02511 (20 March 2007).