



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 12-07639
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

February 22, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on January 9, 2012. (Government Exhibit 1) On July 26, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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 adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

The Applicant answered the SOR in writing on September 5, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on November 2, 2012, and the case was assigned to the undersigned Administrative Judge that same day. DOHA issued a notice of hearing on November 6, 2012, scheduling the hearing for November 27, 2012. At the hearing the Government presented three exhibits, referred to as Government Exhibits 1 though 3, which were admitted without objection. The Applicant presented twenty-one exhibits, referred to as Applicant's exhibits A through U, which were admitted without objection. He also testified on his own behalf. DOHA received the transcript of the hearing (TR) on December 5, 2012. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-

Hearing Exhibit A that was admitted without objection. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Afghanistan. (Tr. p. 29.) Applicant had no objection. (Tr. p. 29.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDING OF FACTS

The Applicant is 41 years old and married with three children. He is applying for a position with a defense contractor as a Cultural Linguist Specialist, and a security clearance in necessary in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence, which could result in the compromise of classified information.

The Applicant was born in 1971 in Kabul, Afghanistan. In 1987, he and his family left Afghanistan and moved to India where they lived for two years. At that time the Applicant's father was an Afghan military pilot who was trained by the United States military, and he feared for his family's lives during the civil wars in Afghanistan. The Applicant's father applied for his family's refugee status in the United States, which was accepted in March 1988. In 1989, at the age of fifteen or sixteen, the Applicant came to the United States with his mother, sisters and brothers. Since 1989, the Applicant has lived in the United States and has made it his permanent home. The Applicant became a naturalized United States citizen in July 1999, and he possesses an American passport. (Applicant's Exhibit L.) He married his first wife, a woman from Columbia that same year, and they have three native born American children. They divorced in 2008. (Applicant's Exhibit B.) In 2009, he married his current wife, a woman from Afghanistan. The Applicant has full legal and physical custody of his three children and they reside with him and his current wife. The Applicant currently works as a marketing manager in a non-defense related company. He is fluent in three languages and he has tutored others in the languages. (Applicant's Exhibit M.)

Since moving to the United States in 1989, the Applicant has returned to Afghanistan on only one occasion. From May 2009 to June 2009, he traveled to Afghanistan to get married. He testified that since then, he has had no contact with anyone in Afghanistan. He has no immediate relatives in Afghanistan. (Tr. p. 82.)

There are some relatives of his on his mother's side in Afghanistan, including uncles, aunts and cousins, but he has no communication with them. He has no property, bank accounts, or assets of any kind in Afghanistan nor does he stand to inherit anything from anyone in Afghanistan. The Applicant states that he has no interest or desire to ever go back to Afghanistan, as the job he is applying for is located in the United States. He further states that he does not provide financial support to his in-laws in Afghanistan. However, during his interview with the DoD, the Applicant stated that he has sent his in-laws between \$50.00 to \$100.00 when they needed it, but not on a consistent basis.

As noted above, the Applicant's father was an Afghan military pilot trained by the United States military. He later became a commercial pilot in Afghanistan. (Applicant's Exhibits R and S.) He is now deceased and is buried in the United States. (Tr. p. 84 and Applicant's Exhibit Q.) The Applicant's mother is a citizen of the United States and resides here. One of the Applicant's brothers served in Afghanistan for a defense contractor in 2004.

All of the Applicant's assets are in the United States. He has a bank account, a car, and a house that he says has little or no equity. (Applicant's Exhibit H.) He also has good credit and pays his taxes in a timely fashion. (Applicant's Exhibits I, J, and K and Post-Hearing Exhibit A.) His immediate family resides in the United States. As stated, he has sole custody of his three children who live with him and depend on him for their support. (Applicant's Post-Hearing Exhibit A.)

The Applicant's first wife is from Columbia and they are divorced. His current wife, whom he met on the internet, is from Afghanistan. She now lives with the Applicant in the United States, and she has no desire or intent to ever return to Afghanistan. She holds a green card and is currently applying for citizenship in the United States. (Tr. p. 87.)

The Applicant's mother-in-law and father-in-law are citizens and residents of Afghanistan. His father-in-law served in a high ranking position of his town or village in Afghanistan. He no longer holds that position. His mother-in-law is a housewife. The Applicant testified that he has only spoken to his father-in-law on four separate occasions totaling less than one hour. The Applicant has had no communication with his in-laws since he married their daughter in 2009. In regard to his mother-in-law, he has never seen her face since she wears a burca. The Applicant explained that he is considered to be a foreigner and a stranger by his in-laws because he left the country of Afghanistan. His wife's parents did not want their daughter to leave the country, but she chose to marry the Applicant over the desires of her parents. The Applicant's in laws do not plan on coming to the United States, and the Applicant's wife has no plans of ever going back to Afghanistan to visit them. (Tr. p. 92.) The Applicant has no contact with anyone in Afghanistan.

The Applicant further testified that he would never do anything to jeopardize the United States national security or the men and women who serve the country. Furthermore if the United States were to go to war with the Afghan Government he would have no problem bearing arms against Afghanistan and on behalf of the United States. (Tr. p. 93.)

Letters of recommendation submitted on behalf of the Applicant by a city councilman, professional associates, church associates, and neighbors and friends attest to his strong sense of integrity, as well as his responsible, honest and trustworthy nature. He is also described as hardworking and dedicated to his job, the community, and his family. (Applicant's Exhibits M and N and Post-Hearing Exhibit A.)

I have taken official notice of the following facts concerning Afghanistan. Afghanistan is an Islamic republic. It has been an independent nation since August 19, 1919, after the British relinquished control. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union. In mid-1990's the Taliban rose to power largely due to the anarchy and the divisions of the country among warlords that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin-Laden since the mid-1990's, to al-Qa'ida generally, and to other terrorist organizations. After September 11, 2001 terrorist attacks, U.S. demands that Afghanistan expel Bin-laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001.

Although there has been some progress since the Taliban was deposed, Afghanistan still faces many daunting challenges, principally defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic and political infrastructure. Human rights problems included extrajudicial killings; torture and other abuse; poor prison conditions; widespread official impunity; ineffective government investigations of local security forces; arbitrary arrest and detention; judicial corruption; violation of privacy rights; restrictions of freedom of religion; limits on freedom of movement; violence and societal discrimination against women; sexual abuse of children; abuses against minorities; trafficking in persons; abuse of worker rights; and child labor. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical, and travel to all areas of Afghanistan remains unsafe, due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups and the possibility of terrorist attacks.

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline B (Foreign Influence)

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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.

Condition that could raise a security concern:

7.(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.

Conditions that could mitigate security concerns:

8.(a) the nature of the relationships with foreign person, the country in which these persons are located, or the positions or activities of those person 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 U.S;

8.(b) there is no conflict of interest, either because the individual' sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The voluntariness of participation;
- f. The presence or absence of rehabilitation and other permanent behavior changes;

- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSION

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in foreign influence that may lead to poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s situation and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

Because of the scope and nature of the Applicant's connections to Afghanistan, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has introduced persuasive evidence in

rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline B of the SOR.

Under Foreign Influence, Guideline B, Disqualifying Condition 7.(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* applies. Mitigating Conditions 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 U.S;* 8.(b) *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest,* and 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* also apply.

The Applicant has lived in the United States since 1989, over half of his life. During this time, he has established his roots in the United States and made it his permanent home. He has become a naturalized United States citizen. He has three native born American children that he has sole custody of, and who reside with him. All of his immediate family including his current wife, ex-wife, children, siblings and mother reside in the United States. All of his assets of any kind are in the United States. In fact, the Applicant has little or no contact with anyone in Afghanistan. It appears that he does not get along well with his in-laws and they even consider him a stranger. There is no emotional bond that the Applicant has with his foreign family members. He has no close association with anyone in Afghanistan. Therefore, his foreign contacts do not pose a security risk. Under the heightened scrutiny analysis, the Applicant's wife's family in Afghanistan do not pose a significant security risk. Accordingly, I find for the Applicant under Guideline B.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information. I have also considered his favorable evidence, including his numerous letters of recommendation. The evidence clearly mitigates the negative effects his foreign influence can have on his ability to safeguard classified information.

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports

a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subpara. 1.a.: For the Applicant.
Subpara. 1.b.: For the 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 the Applicant.

Darlene Lokey-Anderson
Administrative Judge