



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-07647
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

June 28, 2013

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on July 18, 2011. (Item 3.) On August 9, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). 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 on September 1, 2006.

Applicant submitted an Answer to the SOR on September 23, 2012, and requested a decision be made without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to Applicant on January 23, 2013. Applicant received the FORM on March 25, 2013, and was given 30 days to submit any additional information. Applicant submitted additional information in a timely fashion, which is admitted without objection by Department Counsel. (Applicant Exhibit A.) The case was assigned to me

on May 6, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Islamic Republic of Afghanistan. Applicant did not object. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 41, graduated from high school in Afghanistan, and is married. He has been employed by a defense contractor, since July 2011 as a linguist, and seeks a security clearance in connection with his employment in the defense industry. Applicant admitted SOR allegations 1.a and 1.c. Those admissions are findings of fact. Applicant denied the remaining factual allegations in the SOR. The following facts are based on his statements in the Answer to the SOR, Applicant Exhibit A, a DoD Personal Subject Interview contained in a Report of Investigation, and a "Counterintelligence-Focused Security Screening Questionnaire. (Items 4 and 5.)

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness. Applicant was born and raised in Afghanistan. He married his wife in 1994. His wife is a Permanent Resident Alien of the United States. (Item 3 at question 17A.) He has five children, two of whom were born in Pakistan and are naturalized citizens of the United States. His other children are native-born American citizens. He became a naturalized American citizen in June 1995. (Item 4 at 25.)

1.a. Applicant admits his wife is a citizen of Afghanistan, currently residing in the United States.

1.b. Applicant denies that he has a brother who is a resident of Afghanistan. One of his two brothers is an American citizen residing in the United States. Applicant's other brother is a Canadian citizen, who lives in Canada. (Item 3 at question 18.)

1.c. Applicant admits his mother-in-law is a citizen and resident of Afghanistan. Applicant and his family visited his mother-in-law in 2007. His wife contacts her mother three to four times a year by telephone. (Item 5 at 3-4.)

1.d. Applicant denies that he owns property in Afghanistan worth \$1,000,000. He also stated in his Answer under this allegation, "I do not own a property in Afghanistan."¹ Later in his Answer, concerning Paragraph 2 of the SOR, he says:

I deny this property is not only owned by me it is owned by my family and tribe. I only found out about this property when my Father passed away in 2007 and told me it worths \$10000, and I have to fight for property. I have to wait for the right justice in afghanistan.

The figure in question comes from question 37 of a "Counterintelligence-Focused Security Screening Questionnaire," found in Item 4. Item 4 has several parts, including the questionnaire at pages 1 through 9. The questionnaire is in a question and answer format, with the answers evidently filled in by an unnamed interviewer. As opposed to other parts of this item, the questionnaire contains no signature of the Applicant, nor any other indication that he has reviewed and affirmed the statements within it.

In response to a question asking whether Applicant or any member of his family own property overseas, the questionnaire states:

HE [Applicant] owns approximately 10 acres of land in Kandahar, Afghanistan. The land is worth approximately \$1,000,000. This land was passed down to HIM from HIS father, . . . when he passed away in 2008. HE is undecided what HE wants to do with this land. (Item 4.) (Emphasis in original.)

The Report of Investigation contains the results of a Personal Subject Interview of Applicant. This interview was conducted under oath. The unnamed investigator states that Applicant said:

In 2005, after his father passed away, subject [Applicant] inherited about one acre of farm land. The land was used for raising chickens and is valued at approximately \$10,000.00 USD. He pays approximately \$150.00 USD in annual property taxes. He maintains the land because it has been in the family so long and he will eventually pass it on to other family members. (Item 5 at 3.)

In Applicant Exhibit A he states at page 3:

The i beginning my interview I misunderstood in Afghanistan, i do have property but my share of the property is only \$10,000. my father own that property and told me how much my share was. he passed away in 2007 so i have to wait for the right justice and i don't know how to get my share from my trail. you asked my that last time and i use the same answer.

¹All of the statements from Applicant are verbatim quotes. Misspellings are intentionally retained.

Finally, question 20 of the e-QIP asks Applicant if he has any foreign real estate. He says, "Yes," and confirms owning property from 2005 to the present with a value of "10000.000."²

Is the proper figure for the value of Applicant's property \$1,000,000 or \$10,000, or something in between? We add to this discussion three additional pieces of information. Two are from the administrative notice documents provided by the Government. First, from the State Department "Background Note: Afghanistan, Economy," the Gross Domestic Product per capita of Afghanistan in 2009 is estimated at \$900. (Item 6 at 2.)

Second, from the State Department, Bureau of Consular Affairs, "Country Specific Information: Afghanistan":

The absence of records for ownership of property, differing laws from various regimes, and the chaos that comes from decades of civil strife have left property issues in great disorder. Afghan-Americans returning to Afghanistan to recover property, or U.S. citizens coming to the country to engage in business, have become involved in complicated real estate disputes and have faced threats of retaliatory action, including kidnap for ransom or death. (Item 7 at 3.)

Third, the International Monetary Fund, in its most recent "Islamic Republic of Afghanistan - Program Note," states, "Afghanistan is one of the poorest countries in the world and relies heavily on donor grants to fund development and security spending. Per capita income for 2011 is estimated at about US\$530 and the country ranks well below its neighbors on most human development indicators." (International Monetary Fund, *Islamic Republic of Afghanistan - Program Note*, "Background," <http://www.imf.org/external/np/country/notes/afghanistan.htm> (last updated July 21, 2012).

I have reviewed all of the available information. There is confusion in the written record as to what the Applicant owns. In addition, the economy in Afghanistan is poor and any statement of property value is less than an educated guess. Based on my analysis, with the current state of the record, I cannot find with any degree of certainty that Applicant owns property in Afghanistan worth \$1,000,000. In all probability it is worth much less.

1.e. Applicant denies that he has a brother-in-law who is a citizen of Afghanistan and resides in Pakistan. He states in his Answer, "I deny he lives in afghanistan. and my family have contact with him once or twice in every three months."

Regarding Afghanistan the Counterintelligence Screening Questionnaire states at question 2 that Applicant said, "Afghanistan is a good country. I want the Afghanistan to be peaceful one day." (Item 4 at 1.) Other than his mother-in-law and brother-in-law, all

²It is apparent that Applicant meant to say \$10,000.

of Applicant's family and friends reside in the United States or Canada. (Item 4 at 32-33.)

I also take administrative notice of the facts concerning the Islamic Republic of Afghanistan, as set forth in the FORM in Items 6 through 15. Of particular significance are the poor human rights situation; and the active and hostile presence of Al Qaida, the Taliban, and other militant extremist groups that generate instability and openly attack police and military forces of the Afghan government, as well as the local populace and U.S. persons and interests.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has made false statements during the clearance screening process.

2.a. Applicant denies that he falsified his e-QIP (Item 3), question 20, regarding the value of his foreign property. Applicant stated in the questionnaire that he did own property and it was worth "\$10000.000." As set forth in detail under 1.d, above, the true value of this property cannot be determined with any degree of accuracy, but is more likely closer to \$10,000 than \$1,000,000. What the Government argues is falsification can just as easily, and more likely, be put down to confusion and Applicant's obvious lack of facility with written English, which is shown by the quotations found earlier in this decision. Finally, the Government was repeatedly put on notice that Applicant owned property in Afghanistan worth some amount of money. I do not find an intent to falsify with regards to this question, which is found for Applicant.

2.b. Applicant denies that he falsified part of the Counterintelligence Screening Questionnaire by leaving out his brother-in-law, who is discussed under allegation 1.e, above. Attached to Item 4 at pages 32 through 33 is a two page document entitled "Relative and Associates." It has Applicant's name on it and the date of July 27, 2011.³ It states:

Regardless if they are alive or deceased list at a minimum: father, mother (birth, step and in-law) brothers and sisters (step, half and in-law), spouse, ex-spouse, cohabitant, children, any extended relatives with whom you have regular contact, anyone with whom you have a business/financial relationship, anyone with whom you have contact who is in any government/military/religious leadership position, and your sponsor to the U.S.

Applicant entered 19 names, ranging from immediate family to several friends. He did not mention one person, his brother-in-law. The Government contends that I

³This form does not have a statement on it, "The above information is true and accurate to the best of my knowledge," which is found on another document attached to the questionnaire. (Item 4 at 26-28.)

should view this lack, standing alone, as evidence of falsification. Based on the state of this record, I cannot do this. As stated before, Applicant's facility with written English is obviously limited. The pertinent question is involved, and can easily be misunderstood. Based on the current facts, I cannot find that Applicant intentionally left his brother-in-law's name off of this form.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Department Counsel argues on page 4 of the FORM that I should find Applicant's credibility in doubt. Of particular note he states that the unnamed Counterintelligence Screening Questionnaire interviewer states that Applicant "seemed deceptive and was unable to make eye contact," when asked about some debts, which are not part of the SOR. (Item 4 at 8.) Department Counsel also argues facts about Applicant's entry into the United States in 1988, and facts about a civil judgment. His argument is basically *falsus in uno, falsus in omnibus* (who falsifies one thing, falsifies all things). For all the reasons stated above, I do not find that Applicant's answers to the two questions he is alleged to have falsified were made with a deliberate intent to deceive or conceal information.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 AG ¶ 2 describing 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. In addition, the administrative judge may also rely on his or her own common sense, as well as his or her knowledge of the law, human nature and the ways of the world, in making a reasoned 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.” 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance 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 as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's circumstances and the granting or 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 or her a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows under AG ¶ 6:

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.

Applicant has family and property connections to Afghanistan. The following disqualifying conditions under ¶ 7 apply to this case based solely on the facts:

- (a) contact with a foreign family member . . . 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 . . . 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 . . . by providing that information; and
- (e) a substantial . . . property interest in a foreign country, . . . which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant has provided sufficient evidence to show that the following mitigating conditions under AG ¶ 8 apply to this particular case, given his particular background:

- (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.;
- (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;

(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; and

(f) the value or routine nature of the foreign . . . property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has minimal ties to Afghanistan. I note that Applicant has no immediate family in Afghanistan. His wife and children are in the United States, as is one brother. His other brother lives in Canada. His relationship with his mother-in-law and brother-in-law are of minor importance to him, and their contact is casual and infrequent.

I have viewed the fact of his property interest in Afghanistan closely. Applicant stated, "i don't know how to get my share from my trail." (Applicant Exhibit A at 3.) The situation regarding this property is obviously confusing. Under the particular facts of this case, I do not find it to be of current security significance.

Based on my analysis of the available information, Applicant has overcome the adverse inference of his wife's family members' presence in Afghanistan, as well as his property interest. Guideline B is found for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

As stated above, I do not find that Applicant intentionally falsified information on his e-QIP or in part of a Counterintelligence Screening Questionnaire. Accordingly, none of the disqualifying conditions or mitigating conditions have application to this allegation. Paragraph 2 is found for Applicant.

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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B and Guideline E analysis is applicable to the whole-person analysis as well. Based on that analysis, I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his foreign connections and alleged personal conduct. He is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge