



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



In the matter of:)
)
) ISCR Case No. 12-07676
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Sheldon I. Cohen, Esq.

04/19/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated foreign influence and foreign preference security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On July 27, 2012, the Defense of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and C (foreign preference). The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on August 14, 2012, and requested a hearing before an administrative judge. The case was assigned to me on October 15, 2012. Scheduling of the case was delayed because Applicant was working in Afghanistan. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

February 21, 2013, scheduling the hearing for April 2, 2013. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on April 9, 2013.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel and Applicant submitted written requests that I take administrative notice of certain facts about Afghanistan. The requests and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HE) I and II. Applicant and Department Counsel did not object, and I have taken administrative notice of the facts contained in HE I and II. The facts are summarized in the Findings of Fact below.

Evidence

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through O, which were admitted without objection. Applicant also submitted a hearing memorandum that was marked HE III.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. She has worked for his current employer since October 2011. She is applying for a security clearance for the first time. She has at least three years of college, but she has not earned a degree. She is twice divorced with an adult daughter.¹

Applicant was born in Afghanistan to Afghan parents. She came to the United States with a cousin in 1978. She became a U.S. citizen in 1987. Her parents and other family members immigrated to the United States at a later date. Her parents are deceased. Applicant has seven siblings. Four of her siblings are U.S. citizens. She has two siblings who are U.S. permanent residents and may have received their U.S. citizenship. Her seventh sibling lives in Germany. Several of her siblings and their spouses work in Afghanistan as linguists for U.S. defense contractors.²

Applicant had two older half-siblings who were citizens and residents of Afghanistan. Her half-siblings were in their late 60s to early 70s. Applicant had no contact with her half-siblings for about 30 years, and she thought they might be dead. A friend of Applicant's parents told her that her half-siblings were alive, and Applicant met them on a trip to Afghanistan in the mid-2000s. One of her half-siblings has since passed away. Applicant has minimal contact with her remaining half-sibling.³

¹ Tr. at 36, 39-43; GE 1, 4.

² Tr. at 35-38, 59-70; GE 1, 4.

³ Tr. at 71-80; Applicant's response to SOR; GE 1, 4.

Applicant has some extended family members, including an uncle and two cousins, who are citizens and residents of Afghanistan. None of her extended family members are directly associated with the Afghan government. Applicant is not close to her extended family members, and she has little contact with them.⁴

Applicant married her first husband in 1978 in the United States. They had one child who was born in the United States. She and her first husband divorced in 1984. Applicant had custody of her daughter. Her daughter testified that she has never been to Afghanistan and she has never had contact with any relatives in Afghanistan. Applicant married a native-born U.S. citizen in 2000. They divorced in 2012.⁵

Applicant's second husband traveled extensively throughout the world for his job. Applicant often traveled with him. She obtained an Afghan passport in 2010. She always traveled on her U.S. passport and never used the Afghan passport. When she became aware that it could create a security concern, she surrendered the passport to the Afghanistan Embassy. She is willing to renounce her Afghan citizenship, and she believes she has already done so.⁶

Applicant traveled to Afghanistan in about 2004 and 2010. She has not made any personal trips there since she started working as a linguist. She does not own any assets in Afghanistan. Her U.S. assets include real estate. She is proud to be an American citizen and to work in support of the U.S. military.⁷

Applicant has been a linguist for a defense contractor since October 2011. She has worked under combat conditions in Afghanistan since December 2011. She has not had any contact with her extended family members in Afghanistan while she was in Afghanistan. Her performance evaluations are outstanding, and the U.S. military personnel she worked with praised her character, abilities, and service to the mission.⁸

Afghanistan

Afghanistan has been an independent nation since 1919. However, in 1989, a civil war ensued with the departure of the Soviet Union's forces, who had occupied Afghanistan for ten years. In the mid-1990s, the Taliban rose to power. The Taliban were forced out of power in 2001 by U.S. forces and a coalition partnership. After a few years of control by an interim government, democratic elections took place in 2004 and again in 2009. Despite this and other progress made since the Taliban was deposed, Afghanistan still faces many daunting challenges, principally

⁴ Tr. at 80-87; GE 1, 4.

⁵ Tr. at 24-34, 39-41; GE 1.

⁶ Tr. at 53-59, 102-105; GE 3; AE A, N.

⁷ Tr. at 87-90, 96-104; GE 3; AE O.

⁸ Tr. at 42-52, 90-96, 103-104; GE 1; AE B-M.

defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economical, and political infrastructure.

The risk of terrorist activities in Afghanistan remains extremely high. Various groups oppose the strengthening of a democratic government and do not hesitate to use violence to achieve their means. No section of Afghanistan is safe or immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other Western nationals at any time. The country's human rights record remains poor.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in 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.

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."

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." The applicant has the ultimate burden of persuasion to obtain 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 grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

The security concern for foreign influence is set out in 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in 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.

Applicant’s half-sibling, uncle, cousins, and other extended family members are citizens and residents of Afghanistan. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (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.; and

(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.

I considered the totality of Applicant's family ties to Afghanistan. Applicant has lived in this country for 35 years, and she has been a U.S. citizen for more than 25 years. Her parents and six of her seven siblings also immigrated to the United States. Her remaining sibling moved to Germany. Her daughter was born in the United States. She testified that she has never had any contact with her mother's relatives in Afghanistan. Applicant is not close to her extended family members in Afghanistan, and she has minimal contact with them. Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."⁹ AG ¶¶ 8(a) and 8(b) are applicable.

Guideline C, Foreign Preference

The security concern for foreign preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possessed an Afghan passport while a U.S. citizen. AG ¶ 10(a) applied at one point. The renewal of her Afghan passport while a U.S. citizen could raise

⁹ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

concerns under AG ¶ 10(b), as an action to obtain recognition of her Afghanistan citizenship.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11. The following are potentially applicable:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant exercised her Afghan citizenship by obtaining an Afghan passport while a U.S. citizen. Therefore, her dual citizenship is not based solely on her parents' citizenship or birth in a foreign country. AG ¶ 11(a) is not applicable. When she became aware that the Afghan passport could create a security concern, she surrendered the passport to the Afghanistan Embassy. She is willing to renounce her Afghan citizenship, and she believes she has already done so. AG ¶¶ 11(b) and 11(e) are applicable.

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(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. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's character evidence and particularly her outstanding work in Afghanistan under hazardous conditions. I also considered the totality of Applicant's family ties to Afghanistan. Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."¹⁰ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has worked overseas in support of the national defense. She has a few extended family members in Afghanistan, but her close family is in the United States. Afghanistan continues to struggle with human rights issues, and it is plagued by terrorism. The complicated state of affairs in Afghanistan places a significant burden of persuasion on Applicant to demonstrate that her foreign family members do not pose an unacceptable security risk. She has met that burden.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated foreign influence and foreign preference 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 C:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.e:	For Applicant

¹⁰ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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.

Edward W. Loughran
Administrative Judge