



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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 -----) ISCR Case No. 12-09326
)
)
 Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

April 4, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On September 28, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, F and E for Applicant. (Item 1.) 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 for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on October 22, 2012, and she requested that her case be decided on the written record in lieu of a hearing. (Item 4.) On December 28, 2012, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered ten documentary exhibits. (Items 1-10.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 16, 2013. Applicant submitted additional evidence that was entered into evidence without objection as Item

A. The case was assigned to this Administrative Judge on February 8, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel requested in the FORM that I take administrative notice of certain facts relating to the country of Afghanistan. The documents upon which the facts were based have been referred to in the FORM as Exhibits I through IX. The brief summary of the facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 47 years old. She was born in Afghanistan in 1965, emigrated to India in 1988, and arrived in the United States in 1990. She became a naturalized United States citizen in 1994, but resided in Denmark from 2007 to 2009. She presently resides in Afghanistan where she is employed as a linguist for the United States Army. Applicant has no relatives who are United States residents. (Items 4, 5, 7.) Applicant seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline B, Foreign Influence

The SOR lists three allegations, (1.a. through 1.c.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR:

1.a. The SOR alleges that Applicant's husband is a United States citizen residing in Afghanistan. Applicant denied this allegation in her ROSR, but she wrote, "my husband is US citizen and he went to Afghanistan because he visit his family and his mom was sick, and his mom deceased at the Jan 2012 so he was taking care of his sister she got sick and he want to get job us linguist too." [sic] (Item 3.) While Applicant denied this allegation, the facts as she stated them in the ROSR, appeared to indicate that this allegation is correct. I find that Applicant has admitted the facts that are the basis of this allegation.

1.b. The SOR alleges that Applicant's sister-in-law is a citizen and resident of Afghanistan. Applicant denied this allegation in her ROSR, but she wrote, "I don't have sister-in-law citizen of US and resident of Afghanistan. But I do have sister-in-law she is Afghanistan citizen and resident of Afghanistan [sic]." (Item 3.) While Applicant denied this allegation, I find that Applicant has admitted the facts that are the basis of this allegation.

1.c. The SOR alleges that Applicant's cousin is a citizen and resident of Afghanistan. Applicant denied this allegation in her ROSR, but she wrote, "my cousin no a US cit and resident of Afghanistan. But I do have cousin she is Afghanistan citizen and resident. [sic]." (Item 3.) While Applicant denied this allegation, I find that Applicant has admitted the facts that are the basis of this allegation.

Applicant has telephone contact with her cousin approximately once a month and visits her in person approximately one or two times a year. Applicant's cousin is employed as a teacher by an Afghanistan Government funded school. (Items 4, 6, 7)

Guideline F, Financial Considerations

The SOR lists three allegations (2.a. through 2.d.) regarding financial difficulties under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$33,318 for a charged off mortgage account that is unpaid. Applicant denied this allegation in her ROSR, but she wrote that this debt resulted from a foreclosure of her condominium. (Item 3.) This debt arose from a home equity loan that Applicant took out in 2006. As a result of periods of unemployment, Applicant's condo, upon which the loan was based, was foreclosed by a trustee sale in 2009. While Applicant claims that her debt was settled, her recent credit reports, dated September 13, 2012, and February 17, 2012, show that this debt remains unresolved. (Items 7, 8.) I therefore find that this debt is still due and owing.

1.b. The SOR alleges that in October 2009, Applicant defaulted on a loan for her food business in Denmark. Applicant admitted this allegation in her ROSR. (Item 3.)

1.c. The SOR alleges that Applicant filed a Chapter 7 bankruptcy in March 1999, and the bankruptcy was discharged in June 1999. Applicant admitted this allegation in her ROSR (Item 3.)

Guideline E- Personal Conduct

The SOR lists one allegation (3.a.) regarding Personal Conduct under Adjudicative Guideline E.

3.a. The SOR alleges that from about December 2007 through August 2009, Applicant acted in a fraudulent manner to exceed the 90 day visa requirements in Denmark. Applicant denied this allegation in her ROSR. (Item 3.) The evidence establishes that during a period since Applicant became a United States citizen, she resided in Denmark with her brother. Despite a rule in Denmark that limited her time in Denmark to 90 days, Applicant would repeatedly and knowingly travel to the United Kingdom to bypass the 90 day rule. In August 2009, Applicant was denied a visa, and she was informed that her continuing trips to the United Kingdom, where she applied for a visa, were a means to circumvent the rules limiting her time in Denmark. (Item 5.)

Mitigation

Applicant submitted letters from two Linguist Managers, both Sergeants in the United States Marine Corps. Both letters speak very highly about Applicant's service as a linguist for the military. (Item A.)

Current Status of Afghanistan

Afghanistan has been an independent nation since August 1919, after the British relinquished control. A monarchy ruled from 1919 until a military coup in 1973. Following a Soviet supported coup in 1978 a Marxist government emerged. In 1979, Soviet forces invaded and occupied Afghanistan, and the Soviets withdrew in 1989. After the withdrawal a civil war continued, and in the mid 1990s the Taliban rose to power. The Taliban committed massive human rights violations and provided sanctuary to Osama Bin-Laden and Al Quaida. After the September 11, 2001 terrorist attacks the United States forces and a coalition commenced military operations in October 2001, and forced the Taliban out of power and a new democratic government was installed in 2004.

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly frequent, sophisticated, and destabilizing. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

Policies

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 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 over-arching 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." 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 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

AG ¶ 6 expresses the security concern regarding Foreign Influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The applicable condition in this case is: AG ¶ 7(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 . . . and the

individual's desire to help a foreign person, group, or country by providing that information" is applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. Considering Applicant's close and continuing contact with her cousin in Afghanistan, contrasting with her limited contacts, relationships and loyalties within the United States, I do not find that any mitigating conditions are applicable in this case.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19 (a), "an inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19 (c), "a history of not meeting financial obligations" may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt because her home went into foreclosure. Applicant also has a history of financial difficulties including her 2009 default on her business loan in Denmark and her 1999 bankruptcy.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: I do not find that any condition under AG ¶ 20 is applicable. While some of Applicant's financial difficulties occurred as a result of periods of unemployment, Applicant has not resolved the overdue debt listed on the SOR or shown any attempt to do so. While Applicant has indicated that if she could go back to work she would resolve her overdue debts, it is well established that Applicant is not entitled to a security clearance as a means to pay her debts in the future. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Since no evidence was submitted to establish that the foreclosure debt listed in the SOR has been resolved or reduced, Applicant has not mitigated the financial concerns of the Government.

Guideline E, Personal Conduct

Adjudicative Guidelines (AG) ¶ 15 expresses the security concern regarding Personal Conduct. "Conduct involving questionable judgement, 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."

The evidence clearly establishes that Applicant's conduct of her violating Denmark's 90 day visa rule on several occasions over a two year period, which ceased only when the Government of Denmark stopped her, exhibits questionable judgement and unwillingness to comply with rules and regulations.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. If such an individual exhibits questionable judgement, and unwillingness to comply with rules and regulations, it is extremely difficult to conclude that she nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

In reviewing the disqualifying conditions under Personal Conduct ¶16, I conclude that ¶16(d)(3) applies as Applicant's conduct reviewed in total shows "a pattern of dishonesty or rules violations." Because Applicant's conduct occurred as recently as 2009, and it did not stop under Applicant's own volition, I do not find that any mitigating condition is applicable under ¶17.

Applicant's conduct in Denmark exhibits questionable judgement, and an unwillingness to comply with rules and regulations. I resolve Personal Conduct against Appellant.

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. Based on the reasons cited above

as to why the Mitigating Conditions do not apply under Guidelines B, F, and E, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the 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. through 1.c.:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.c.:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. :	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge