



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



In the matter of:)	
)	
)	ISCR Case No. 12-09329
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

01/15/2013

Decision

WHITE, David M., Administrative Judge:

Applicant was born and raised in Afghanistan. He briefly went to Pakistan as a refugee, then became a U.S. resident. His mother, four siblings, and mother-in-law are resident citizens of Afghanistan. He and his siblings inherited the family farm there. He failed to mitigate resulting security concerns. A short sale resolved his mortgage default. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on June 25, 2011, and an updated SF 86 on September 15, 2011. On August 16, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines B (Foreign Influence), and F (Financial Considerations). 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on August 30, 2012, and initially requested a decision without a hearing due to his pending return to Afghanistan for work. After discussing the possibility of an expedited hearing with Department Counsel on September 12, 2012, Applicant requested a hearing before an administrative judge and waived his right to 15 days of notice prior to the hearing. Department Counsel was prepared to proceed that same day, and the case was assigned to me on September 13, 2012. DOHA issued a Notice of Hearing on September 17, 2012, and I convened the hearing, as scheduled, on September 25, 2012. Department Counsel participated in the hearing via video teleconference. The Government offered exhibits (GE) 1 through 10, which were admitted without objection. The Government also offered hearing exhibit (HE) I, and administrative notice documents in support of that request that I take administrative notice of the facts contained therein concerning Afghanistan. Applicant had no objection to the request for administrative notice of the facts set forth in HE I, and I granted the request. Applicant offered exhibits (AE) A through F, which were admitted subject to review and possible objection by Department Counsel, and Applicant testified on his own behalf. I granted Applicant's request to leave the record open until October 2, 2012, to permit submission of additional evidence and the address in Afghanistan to which he desired that the transcript and decision be mailed. On September 26, 2012, Applicant submitted that information, which was marked AE G, and AE H. After reviewing all of Applicant's exhibits, Department Counsel had no objection to their admission into evidence and they were admitted. DOHA received the transcript of the hearing (Tr.) on October 5, 2012, and the record closed.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor, where he has worked as an interpreter assisting U.S. forces in Afghanistan for more than a year. He has never held a security clearance and has no military service. He completed high school in Afghanistan and earned a bachelor's degree from a large state university in 1990. He is married, since 2002, and has two children ages 8 and 3. Applicant and his wife are naturalized U.S. citizens, and his children were born here.¹ In his response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.c through 1.g. He denied those in SOR ¶¶ 1.b and 2.a.² Applicant's admissions are incorporated in the following findings.

Applicant was born and raised in Afghanistan. His father, who passed away in 1995, was a farmer and teacher. His mother did not work outside their home. Applicant went to Pakistan, as a refugee from the Russian invasion in late 1980. In 1981 his older brother sponsored him to immigrate to the United States, where he sought to achieve a better life and a university education. He became a naturalized U.S. citizen in September 1994. He did not become a citizen when he first became eligible because he

¹GE 1; GE 2; Tr. 6-7, 51-53.

²AR. Each answer included an explanation. His denial of ¶ 1.b was partial in that only one of two brothers who are still Afghan citizens resides there. The other is now a permanent U.S. resident. His third surviving brother is a naturalized U.S. citizen and resides here.

intended to return to Afghanistan after he completed his U.S. college education and the war there ended. When he realized that the war was not going to end, he decided to live the rest of his life in the United States and pursued citizenship. In describing his feelings for Afghanistan, he said that he left with hard feelings toward the communist regime that made him leave against his will. He loves Afghanistan, and has family living there that he still cares about, but has begun a new life in, and intends to stay in the United States.³

Applicant's mother, who is in her late 70's or older, lives with one of his brothers and his sister-in-law on the farm in Afghanistan that Applicant's father left to his children upon his death. Applicant was unable to accurately estimate the value of this property, but thought it was worth about \$25,000. Applicant also has three older sisters who are resident citizens of Afghanistan. None of them worked outside their homes. One is a widow and the other two are married to retired educators. Until he began working with the U.S. military as an interpreter in September 2011, he had sporadic contact with these family members. Applicant traveled to Pakistan and/or Afghanistan to visit family and relatives for periods lasting from two weeks to three months in 1994, 1998, 2002, 2003, 2007, and 2011. He did not contact them while working in Afghanistan, except for his eldest sister, with whom he has always had a special and very close relationship.⁴

Applicant's wife's mother, two brothers, and three sisters are resident citizens of Afghanistan. Her brothers are radiologists who work in a local clinics and her sisters are homemakers. Applicant has little to no contact with his wife's family, but she regularly contacts them.⁵

During the last 12 years, Applicant worked as a computer software/hardware engineer or technician with a few periods of unemployment. Due to a corporate reorganization, he was laid off in April 2010, after working for five years in his most recent job in that field. Unable to find another job in the United States, he went to Afghanistan in late February 2011 to visit his family and look for work there. He contacted numerous IT and telecommunication companies in Afghanistan seeking employment, but after a month he was unsuccessful in obtaining a job. He then returned to the United States, learned about his current position from a friend of his wife, and decided to apply for work as a linguist.⁶

Applicant and his wife rented their home until April 2007, when they bought a house with a first mortgage of about \$220,000 and a monthly payment of \$1,487. In order to benefit from a better school district and a nicer house, they moved into and rented Applicant's brother's home in June 2009. They rented their house to tenants at a

³GE 1; GE 3; GE 5.

⁴AR; GE 2; GE 3; GE 4; GE 5; Tr. 60-63, 68-70.

⁵AR; GE 3; GE 5; Tr. 63-66.

⁶GE 1; GE 3; GE 4; Tr. 57-59.

net loss of about \$400 per month after expenses. Their tenants moved out and they made their last mortgage payment on the house in February 2010, after which the mortgage went into default. As noted above, Applicant was laid off in April 2010, after which he had no income from which to make mortgage payments. In December 2011, Applicant was able to complete an approved short sale on the property. The mortgage creditor issued Applicant and his wife IRS Form 1099-C's reporting cancellation of their remaining deficiency debt of \$63,017 on the mortgage loan. This debt is fully resolved.⁷

The non-commissioned officer in charge for whom Applicant worked as a linguist and cultural advisor in Afghanistan wrote a letter describing Applicant's outstanding performance, loyal dedication to mission accomplishment, and excellent character. His Regional Support Manager also provided a letter describing his superior performance and self-sacrifice. Four other colleagues and friends, who have known him for many years, also wrote letters describing his good character, responsibility, and loyalty to the United States.⁸ His service in Afghanistan was primarily performed on U.S. bases, although he also went on several missions in the field. While never under direct attack, he was present in a battlefield area on a couple occasions.⁹

I took administrative notice of the facts set forth in HE I concerning the Islamic Republic of Afghanistan, which are incorporated herein by reference. Of particular significance are the poor human rights situation; endemic corruption; and the active and hostile presence of Al Qaida, Taliban, and other extremist groups that generate instability and openly attack police and military forces of the government, as well as U.S. forces, persons, and interests.

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 (DCs) and mitigating conditions (MCs), 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, 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

⁷AR; AE G; AE H; Tr. 71-79.

⁸AE A through AE F.

⁹Tr. 82-83.

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 the 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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.

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 SOR allegations and substantial evidence in this case potentially established four DCs under this guideline:

(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.

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Afghanistan has significant internal anti-western militant and terrorism threats that operate contrary to U.S. interests. Accordingly, family and property connections there have significant potential to generate heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a), (d), and (e), than would similar connections in many other countries.

Applicant's mother and favorite older sister, with whom he maintains regular communication and close familial relationships, are resident citizens of Afghanistan. He has lesser, but still significant, relationships with his brother, two other sisters, two brothers-in-law, and sister-in-law who are also resident citizens there. He and his surviving siblings inherited ownership of the family farm on which they were raised, and where his mother and one brother's family still live. I find that, regardless of Applicant's imprecise valuation of this property, it is of significant importance to him as his family home. Applicant shares living quarters with his wife, whose mother and many siblings are also resident Afghan citizens. He has an entirely legitimate, serious interest in the welfare of her family members, as well as his own family in Afghanistan.

These facts meet the Government's burden of production by raising all four of the aforementioned disqualifying conditions. Applicant's contacts, relationships, and connections with Afghanistan through his relatives residing there shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), (d), and (e) security concerns are:

(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 business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used to effectively influence, manipulate, or pressure the individual.

Considered in light of the substantial anti-western terrorism threat and impending departure of most NATO military forces from the region, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the U.S. due to his family ties there. As recently as March 2011, he was actively seeking local employment as a computer engineer in Afghanistan, where he has close family ties. He has close relationships with, and a strong interest in protecting his mother, brother and sisters, and his wife's family who are residents and citizens there. His communication and contact with his Afghani family members since he came to the U.S. are neither casual nor infrequent. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and (c).

The evidence also fails to establish significant mitigation under AG ¶ 8(b). Applicant has no substantial assets in the United States, having lost the house he purchased in 2007 through a short sale. After a substantial period of unemployment and his failure to obtain a job in Afghanistan, he finally obtained employment and served effectively as a contract linguist/cultural advisor supporting U.S. forces in Afghanistan. He did not establish that he sought or accepted that lucrative employment for reasons, or endured life-threatening conditions, which would sufficiently demonstrate deep or longstanding U.S. relationships or loyalties under applicable Appeal Board precedent. Finally, regardless of the uncertain monetary value of Applicant's interest in his family's farm in Afghanistan, it is his only property and the family home where his mother still lives. Accordingly, it retains the potential to support a conflict of interest and could be used for manipulation or pressure. AG ¶ 8(f) does not apply.

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence raised potential security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

In April 2007, Applicant obtained a mortgage loan to purchase a house. He stopped making the required payments toward this loan in February 2010, according to the record credit reports. This evidence shifted the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant was able to arrange a short-sale of the home in question that closed in December 2011. The lender forgave the remaining deficiency debt of \$63,017. There is no evidence of any other financial irresponsibility. Accordingly, this incident was a one-time financial problem, precipitated by the unforeseeable subsequent collapse of the real estate market, which Applicant responsibly acted to resolve. Applicant fully mitigated Guideline F security concerns with evidence establishing AG ¶¶ 20(a), (b), (c), and (d).

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 pertinent facts and circumstances surrounding this case. Applicant's conduct is not in question here. He is a mature and experienced individual, who has acted responsibly and provided valuable service to U.S. military forces deployed in combat. However, the inherent potential for pressure, coercion, exploitation, or duress from the presence of Applicant's and his wife's family members and property in Afghanistan remains unmitigated. Placing Applicant in a position wherein it is foreseeable that he could be forced to choose between the security interests of the United States and the interests of his or his wife's family is the harm to be avoided under the President's guidelines and Appeal Board precedent. Applicant failed to show that such potential is diminished to any reasonable extent. His loyal and dedicated service in support of American military units in Afghanistan is highly commendable, but does not justify placing him or his relatives at risk of exploitation due to his access to classified information.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from foreign influence considerations.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant (in part)
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge