



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



In the matter of:)	
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)	ISCR Case No. 12-09331
)	
Applicant for Security Clearance)	

Appearances

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

March 4, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On August 24, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B 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 September 14, 2012, and he requested that his case be decided on the written record in lieu of a hearing. (Item 3.) On December 7, 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 eight documentary exhibits. (Items 1-8.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on January 29, 2013. Applicant submitted additional evidence, which has been identified and entered into evidence

without objection as Item A. The case was assigned to this Administrative Judge on January 24, 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 that were reviewed in the FORM. 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 following findings of fact:

Applicant is 50 years old. He was born in Afghanistan, where he attended high school and college. He also served three years of mandatory military service in the Afghan Army. Applicant received medical training to become a medical doctor in Uzbekistan from 1987 to 1993.

Applicant emigrated to the United States in 2002, and he became a United States citizen in 2008. He is married to an Afghanistan born United States citizen, and they have a two year old child. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline B, Foreign Influence

The SOR lists 12 allegations, (1.a. through 1.l.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. Applicant has admitted all of the allegations listed in his RSOR (Item 3.) Applicant provided information about his relatives in Items 4, 5, 7c and 7e, which will be discussed below :

1.a. Applicant's father is a citizen and resident of Afghanistan. He is a retired Afghan Army officer. Applicant's father spent 40 years in the Afghan Air Force. He retired in 1992 as a Colonel. Applicant has monthly telephone contact with his father, and he visited his father in Afghanistan for two weeks in 2011.

1.b. Applicant's brother A is a citizen and resident of Afghanistan. He is a retired officer after serving 20 years in the Afghan Army. Applicant and brother A have yearly contact.

1.c. Applicant's brother B is a citizen and resident of Afghanistan. The SOR alleges that he is currently serving as a Sergeant in the Afghan Army. Applicant noted in his RSOR that this brother is a Captain. (Item 3.) They maintain monthly contact, and he visited this brother during his 2011 Afghanistan trip.

1.d. Applicant's brother C is a citizen and resident of Afghanistan. He is employed as a manager by a private company. They maintain some contact.

1.e. Applicant's brother D is a citizen and resident of Afghanistan. The SOR alleges that he is currently serving as a Lieutenant in the Afghan Army. Applicant noted in his RSOR that this brother is a Sergeant. (Item 3.) They maintain monthly contact, and he visited this brother during his 2011 Afghanistan trip.

1.f. Applicant's brother G is a citizen and resident of Afghanistan. He is employed as a technician for a private company. They maintain monthly contact.

1.g. Applicant's sister H is a citizen and resident of Afghanistan. She is a housewife. They maintain monthly contact, and he visited this sister during his 2011 Afghanistan trip.

1.h. Applicant's brother-in-law I is a citizen and resident of Afghanistan, married to Applicant's sister H, above. This brother-in-law is a doctor, and he works for the Government.

1.i. Applicant's sister J is a citizen and resident of Afghanistan. She is a housewife. They maintain monthly contact.

1.j. Applicant's brother-in-law K is a citizen and resident of Afghanistan, married to Applicant's sister J, above. He is employed by a private company, and Applicant has only met him once.

1.k. Applicant's sister L is a citizen and resident of Afghanistan. She is a housewife. They maintain yearly contact.

1.l. Applicant's brother-in-law M is a citizen and resident of Afghanistan, married to Applicant's sister L, above. He is employed by a private company, and Applicant has only met him once.

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 conditions in this case include: AG ¶ 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.” This applies because Applicant’s family members all are citizens and residents of Afghanistan, a country of heightened risk, and several of his family members have had or are continuing to have long military careers with the Afghan Army.

I find 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 also applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. Because of Applicant’s continuing relationship with his family members, who are citizens and residents of Afghanistan, I cannot find that AG ¶ 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,” is applicable to this Applicant, nor do I find that any other mitigating factor is applicable to this case.

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 disqualifying conditions apply under Guideline B, and why no mitigating conditions apply, 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.l.:

Against 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.

Martin H. Mogul
Administrative Judge