



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 12-09333
)
)
 Applicant for Security Clearance)

Appearances

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

08/01/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his omission of information from his security clearance application. However, security concerns about his close and continuing ties to Afghan citizens residing in the United States, Afghanistan, and Pakistan remain unchanged. His request for a security clearance is denied.

Statement of the Case

On February 23, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

On September 11, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline B (Foreign Preference) and Guideline E (Personal Conduct).² Applicant timely responded to the SOR and requested a decision without a hearing. On April 30, 2013, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on June 3, 2013, but he did not respond to it. The record closed on July 3, 2013, and the case was assigned to me on July 23, 2013.

Findings of Fact

Under Guideline B, the Government alleged that Applicant's mother is an Afghan citizen residing in Pakistan (SOR 1.a); that his five sisters, three of whom reside in Pakistan, are Afghan citizens (SOR 1.b); that his three brothers, all of whom reside in Pakistan, are Afghan citizens (SOR 1.c); that he has one uncle and two aunts who are Afghan citizens and live in Pakistan (SOR 1.d); and that he has two other uncles and one other aunt who are citizens of and reside in Afghanistan (SOR 1.e). Under Guideline E, the Government alleged that Applicant deliberately falsified material facts when he submitted his eQIP. Specifically, it was alleged that he deliberately answered "no" when asked in Section 20A if he had ever provided financial support to any foreign national when, in fact, he provides financial support to his mother in Pakistan. (FORM, Item 1)

Applicant denied the allegations at SOR 1.b, 1.c, and 2.a, but admitted the other allegations. (FORM, Item 2) As to his denial of SOR 2.a, Applicant claimed he did not understand the question. His admissions are incorporated herein as facts. After reviewing all of the available information, I make the following additional findings of fact.

Applicant was born in Afghanistan in 1982. In 1986, he moved with his family to neighboring Pakistan to escape the Soviet occupation and the violence associated with the Mujahedin resistance and subsequent civil war. He lived in Pakistan until November 2002, when he came to the United States. Applicant became a U.S. citizen in October 2011. He has not attended school in the United States, but has been employed here in a variety of low-paying retail and food service jobs. After a brief period of unemployment in late 2011, Applicant was hired in January 2012 as a translator by his current employer, who is sponsoring his request for clearance. (FORM, Item 3)

Appellant initially applied in June 2010 for work as a translator with the company where he now works. He was not hired at that time for medical reasons. In September 2010, he reapplied and submitted an Application for Public Trust Positions (SF 85P). (FORM, Item 5) He also underwent a pre-employment interview in which a Counterintelligence (CI) Screening Questionnaire (CSQ) (FORM, Item 6) was completed. In that interview, he said he had heard about the job on television. He

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included 17 documents (Items 1 - 17) proffered in support of the Government's case. Items 8 - 17 were submitted for the limited purpose of administrative notice of facts about Afghanistan and Pakistan.

wanted the job to earn more money and to help his mother financially. He again was not hired, this time because of unresolved CI issues. He also disclosed that he sends about \$200 to his mother, a citizen of Afghanistan living in Pakistan. She is a widow who has never worked outside the home and who is largely unable to support herself. Applicant talks to her by telephone every week. (FORM, Item 7)

When Applicant was hired for his current position in January 2012, he submitted another eQIP (FORM, Item 3) and completed another CI interview and CSQ (FORM, Item 4). During his February 2012 CI interview, he again stated that he heard about the job on television, but he did not mention his desire to help his mother financially. However, on the issue of providing foreign financial assistance, the interview only asked about such assistance to foreign persons or entities engaged in activities harmful to the United States. By contrast, one of the questions in eQIP Section 20A (Foreign Activities) asked "Have you EVER provided financial support for any foreign national?" Applicant answered 'no.'" In response to SOR 2.a, Applicant acknowledged that he still sends money to his mother, but that he thought the eQIP question referred only to foreign organizations or entities other than his family. He denied intentionally falsifying his eQIP. (FORM, Item 2)

Despite Applicant's denials, the record supports the SOR allegations regarding his family ties to Afghanistan and Pakistan. In February 2012, he was interviewed by a Government investigator as part of his background investigation. A review of his relatives and other personal information showed that most of Applicant's family are citizens of Afghanistan and reside either there or in Pakistan. He also has three sisters who live in the United States. They are housewives who still hold Afghan citizenship and are registered aliens. Only one of his sisters' husbands is a U.S. citizen. Applicant speaks with his sisters by telephone about once a week. Applicant's brothers and uncles work as tailors, barbers, and drivers, or are in school. His sisters and aunts are housewives. None of his family has any current or former ties to any foreign government. This same information was reviewed in his CSQs. (FORM, Items 3, 4, 6, and 7)

Applicant first entered the United States on a fiancé visa. He married a naturalized citizen, also from Afghanistan, in January 2003. The marriage ended by divorce in February 2010. Applicant has three children born in the United States by a woman with whom he has cohabited since 2007. They range in age from two to six years. (FORM, Items 3 and 7)

Regarding Afghanistan and Pakistan, I take administrative notice of the following facts contained in FORM Items 8 - 17:

Most of Pakistan's western border abuts Afghanistan. To the southwest, Pakistan shares a border with Iran. Extensive terror networks operate along the border with Afghanistan in the Federally Administered Tribal Areas (FATA) along the central Afghanistan border, in the Khyber Pass region in northwest Pakistan, and in Balochistan Province in southwest Pakistan. Chief among these terror networks are the Taliban, the Haqqani Network, and al-Qaeda. They operate in many cases without meaningful interference from the Pakistani government, and their activities consist of anti-U.S. and

anti-coalition military operations across the border into Afghanistan. The FATA, and other areas mentioned above, provide safe havens from which terrorists have been able to plan and launch attacks on U.S. and coalition troops and interests in Afghanistan. Bombings and other acts of terror also have been reported throughout Pakistan, but the main focus of terrorist activity in Pakistan consists of attacks in urban areas, such as the capital city of Islamabad. Because of this information, the U.S. Department of State has issued numerous travel advisories and warnings to U.S. citizens considering traveling to Pakistan.

The United States and Pakistan have had diplomatic relations since Pakistan obtained its independence from Great Britain in 1947. The countries' interests have been in general agreement for much of that time. Since 2001, Pakistan has helped the U.S. in its global war on terrorism and has helped capture hundreds of Taliban and Al-Qaeda personnel. However, as noted, efforts to deny areas adjacent to Afghanistan as safe havens for terrorist organization have not been as effective as the U.S. would like. Another issue related to terrorist activity in Pakistan is the fact that Pakistani government and military entities have committed numerous human rights violations in the name of counter-terror operations and investigations. Extra-judicial killings, arbitrary arrests without access to due process, and other human rights problems are commonplace.

Further, the Islamic Republic of Pakistan is a federal republic made up of an executive, a legislative, and a judicial branch, whose powers and limitations are contained in a national constitution. The legislature is comprised of representatives in a bicameral parliament chosen through open elections from a multi-party system. A president and prime minister, and appointed cabinet members make up the head of the executive branch. Supreme court justices are appointed by the executive to oversee a common law legal system influenced by Islamic Sharia law.⁴

Afghanistan is an independent nation first ruled by indigenous monarchs beginning in 1919, when the British Empire relinquished control. However, in 1979, the Soviet Union invaded Afghanistan and occupied the country until 1989, when the Mujahedin resistance drove them out. Thereafter, a civil war took place which ended when the Taliban established a regime based on an extreme fundamentalist version of Islamic law. Human rights were virtually non-existent, especially for women, and dissent was countered through violent repression. The Taliban regime also created circumstances that allowed Osama bin Laden and al-Qaida safe haven and resources for international terrorist actions that culminated in the attacks on the U.S. on September 11, 2001.

The subsequent U.S. military actions against the Taliban allowed the establishment of an openly-elected government based on a western democratic model. However, the country remains unstable. Human rights abuses continue at the hands of the Taliban in areas they still control. The Afghan government continues to struggle in

⁴ In addition to the contained in the FORM, I obtained information *sua sponte* from the CIA World Factbook page regarding Pakistan at www.cia.gov.

its efforts to overcome a legacy of corruption, and U.S.-led coalition forces have been unable to provide a secure environment either in the countryside or in Afghanistan's urban centers. U.S. personnel and anyone aligned with U.S. interests are at constant risk of attack, kidnapping, and other hostile acts by insurgents.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for

⁵ Directive, 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

them to have access to protected information.⁹ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.¹⁰

Analysis

Personal Conduct

Applicant omitted from his most recent eQIP the fact that he sends money to his mother periodically. The SF 85P he submitted in 2010 did not ask about foreign ties or financial assistance. Deliberate falsifications in response to reasonable investigative inquiries raise concerns about an individual's judgment and trustworthiness. Those concerns are articulated at AG ¶ 15 as follows:

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.

More specifically, if shown to be deliberate, Applicant's omission would be disqualifying under AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted omitting from his 2012 eQIP the fact he sends his mother money. However, he denied doing so in an attempt to hide that fact from the Government. He explained that he thought he was being asked about foreign financial assistance to entities other than his family. This is consistent with the inquiries of both CSQs and CI interviews, which addressed financial aid to entities, family or otherwise, engaged in conduct or activities harmful to U.S. interests. A review of all information probative of his intent in filling out his eQIP shows that he was generally forthcoming about all of his foreign contacts and other material information in his background. I conclude Applicant did not try to conceal his financial assistance to his mother.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Foreign Influence

The Government's information established that Applicant has close family ties to Afghanistan and Pakistan. Available information also shows that both countries present a heightened risk that Applicant could be pressured or coerced through his ties there. The security concern raised by these facts is expressed at AG ¶ 6 as follows:

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 is close to his mother. He provides modest financial support when he can, and he contacts her often. He also is close to his siblings in the United States and abroad, with whom he has weekly contact. He applied for his translator job so he could continue to help his mother. Other than his girlfriend and their three children, all of his family ties, including his sisters in the U.S., are citizens of Afghanistan, a country which presents a heightened risk of exploitation. Further, some of his foreign contacts still reside in Afghanistan. Others reside in Pakistan, also a country that presents a heightened risk of exploitation. This information requires application of the following AG ¶ 7 disqualifying conditions:

- (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.

Generally speaking, Applicant's assistance to his mother, and his continuing contact with his siblings, are admirable and reasonable. However, in the more limited context of adjudicating suitability for access to classified information, they present reasonable security concerns. These facts have placed on Applicant the burden of showing he will protect U.S. national interests and that he will not be unduly conflicted by his family ties to Afghanistan and Pakistan. To do so, he must present information to establish one or more of the following AG ¶ 8 mitigating conditions:

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority; and

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

The mitigating condition at AG ¶ 8(d) is not pertinent to these facts and circumstances. Applicant is entitled to some benefit under AG ¶ 8(e) because he disclosed his foreign ties in two CSQs and his second eQIP. However, AG ¶ 8(e) focuses more on persons who already have been working in foreign countries or with foreign citizens. That is not the case here. Applicant has no record of work as a translator in support of U.S. efforts in Afghanistan or elsewhere.

As to the remaining mitigating conditions, I conclude none apply. The heightened risk of associations in or with these two countries cannot be disputed. As to Applicant's sense of loyalty or obligation, he did not address this issue in response to the SOR or FORM. His statements on this point during both CI interviews and in his background investigation subject interview were ambiguous at best. Finally, Applicant is in regular and ongoing contact with his mother and siblings. These ties are presumed to be close, and Applicant presented nothing to rebut that presumption. On balance, he has not met his burden of persuasion here, and the security concerns raised by the Government's information remain.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a 31-year-old naturalized citizen originally from Afghanistan. He has lived in the United States for almost 11 years and he has been a U.S. citizen for almost two years. He has three U.S.-born children and has

worked hard at various jobs since arriving in the U.S. He is close to his mother and siblings and demonstrates responsibility in trying to help his mother financially. He also appears to have been candid about his foreign ties. However, he did not present sufficient information to establish that his circumstances would preclude a conflict of interest between his obligation to protect U.S. interests rather than those of foreign citizens to whom he is close. He provided nothing in response to the FORM, leaving unchanged the doubts about his suitability for a clearance. The Government's compelling interest in protecting its sensitive information requires those doubts be resolved against granting access to classified information.

Formal Findings

Formal findings 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 - 1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge