



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-09332
)	
Applicant for Security Clearance)	

Appearances

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

05/23/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the foreign influence concerns arising from his family members residing in Afghanistan. Clearance is denied.

Statement of the Case

On September 5, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging the security concerns under Guideline B (Foreign Influence). On or about October 5, 2012, Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record.

On January 11, 2013, Department Counsel issued his file of relevant material (FORM) and sent it to Applicant. The FORM contains the Government's proposed findings of facts, argument, and 16 documentary exhibits. Applicant did not object to Government Exhibits (Gx.) 1 through 16, and they are hereby admitted into evidence.

On February 5, 2013, Applicant submitted his response to the FORM (Response). With his Response, Applicant submitted two character letters, decorations

he has received for his work in support of the U.S. mission in Afghanistan, his identification badges, and proof of his wife's U.S. citizenship. These documents were marked Applicant's Exhibits (Ax.) A through E and admitted into evidence without objection. On April 5, 2013, I was assigned Applicant's case.

Findings of Fact

Applicant, 40, was born in Afghanistan and immigrated to the United States in 1986. He was naturalized in 1996. He has worked for the U.S. Government as a linguist in Afghanistan since 2009. He has received high praise for his commitment and work on behalf of the U.S. mission in Afghanistan. (Gx. 4; Ax. A – C)

Applicant's parents and two of his siblings are citizens and residents of Afghanistan. His parents are elderly and retired. His brother manages the family farm, while his sister does not work outside the home. Applicant has irregular contact with his parents and siblings due to the lack of dependable phone service where they live. He provides some financial support to his family. In about 2010, Applicant briefly saw his brother once, while at work as a federal contractor in Afghanistan. He asked his brother not to ask him or even speculate what he was doing in Afghanistan for their family's safety. Applicant states that he was not required to report this brief contact with his brother, a host country national, to U.S. authorities. (Gx. 3 – 6; Response)¹

Applicant's wife is a naturalized U.S. citizen, who currently resides in Afghanistan with her family.² Her parents and siblings are citizens and residents of Afghanistan. Applicant has no contact with his wife's siblings, but tries to stay in constant contact with his wife. He believes his wife is relatively safe where she resides. He has told his wife not to disclose to anyone that he works for the U.S. Government or even that he is in Afghanistan. (Gx. 3 – 6; Response; Ax. E)

Following the September 11 attacks, U.S. and coalition forces liberated Afghanistan. (Gx. 7 at 7) "Afghanistan has made significant progress since the Taliban were deposed in 2001, but still faces daunting challenges, including fighting an insurgency, preventing the return or resurgence of al-Qaida, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic, and political infrastructure." (Gx. 8 at 1) The threat posed by remnants of the former Taliban regime, the al-Qaida terrorist network, and other groups hostile to the International Security Assistance Force, remains high. No part of Afghanistan is considered safe, "and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other Western nationals at any time." (Gx. 12 at 1) The U.S. State Department reports significant human rights problems persist. (Gx. 9)

¹ Applicant has another brother who is a citizen and resident of another country and no foreign influence concern arises from said relationship. Thus, allegation 1.c is decided in Applicant's favor.

² In light of the evidence Applicant presented with his Response, allegation 1.e is amended to read: "Your wife is a citizen of the United States, residing in Afghanistan."

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. Furthermore, “[o]nce a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

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. 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 an 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline B, Foreign Influence

The foreign influence concern is set forth at 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.

An individual's familial ties to a foreign country can raise the foreign influence concern. However, there is no *per se* rule against applicants who have such ties. Instead, in assessing the likelihood that an applicant's family members are vulnerable to coercion, an administrative judge must consider the foreign government involved; the intelligence gathering history of that government; the country's human rights record; and the presence of terrorist activity in that country.³

Applicant's family members in Afghanistan, coupled with the danger posed by hostile forces in Afghanistan, raise the foreign influence concern. These foreign connections also establish the following disqualifying conditions under 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; 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.⁴

³ ISCR Case No. 11-06619 at 2 (App. Bd. May 2, 2013)

⁴ I considered AG ¶ 7(f), "failure to report, *when required*, association with a foreign national." (emphasis added) No evidence was presented contradicting Applicant's assertion that he was not required to report his contact with his brother, as alleged in ¶ 1.g. Although such reporting requirement seems reasonable, Applicant has voluntarily disclosed and discussed his foreign family members throughout the course of several security interviews. Accordingly, allegation 1.g is decided in his favor.

Applicant's foreign connections do not end the analysis. AG ¶ 8 sets forth a number of conditions that could mitigate the concern. The following mitigating conditions under AG ¶ 8 are relevant:

(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.⁵

Applicant immigrated to the United States when he was a young man and has been a U.S. citizen for nearly two decades. He has been working in Afghanistan in support of the U.S. mission for the past four years and forcefully states that he is a loyal U.S. citizen. However, his family's presence in Afghanistan raises a significant security concern because of the realistic danger that they can be used by hostile forces within Afghanistan to influence or manipulate him. Notwithstanding his deep and longstanding relationships to the United States and his attempts to shield his family from the danger posed by his work for the U.S. Government in Afghanistan, the foreign influence concern is not mitigated. Applicant's family remains particularly vulnerable to the threat posed by the Taliban and other extremist elements operating within Afghanistan.⁶ AG ¶¶ 8(a) and (b) do not apply. At the same time, this finding is *not* a comment on Applicant's patriotism and loyalty but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member.⁷

⁵ I considered the mitigating condition at AG ¶ 8(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." Although Applicant has no contact with his wife's siblings, his contact and the depth of his relationship with his wife, his parents, and his siblings cannot be classified as either infrequent or casual. He also did not rebut the presumption that he "has ties of affection for, or obligation to, the immediate family members of [his] spouse." ISCR Case No. 11-06619 at 3 (App. Bd. May 2, 2013).

⁶ See ISCR Case No. 09-08099 (App. Bd. Sep. 14, 2012) (Despite his deep and longstanding relationships in the United States, applicant failed to mitigate the foreign influence concern arising from his family in Afghanistan). See *also* ISCR Case No. 12-09329 (App. Bd. Mar. 18, 2013) (same).

⁷ ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).⁸ I specifically considered Applicant's service as a federal contractor for the past four years and his exceptional performance in support of the U.S. mission in Afghanistan. However, after weighing the disqualifying and mitigating conditions, and evaluating all the evidence in the context of the whole person, I conclude Applicant did not mitigate the foreign influence concern. Overall, the record evidence leaves me with doubts about Applicant's eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 1.a & 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

⁸ The non-exhaustive list of adjudicative 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.