



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



In the matter of:)
)
) ISCR Case No. 12-09334
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

07/10/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant, 33, was born in Afghanistan and became a naturalized U.S. citizen in 2004. His wife is an Afghan citizen, with a U.S. permanent resident card. She has been residing with her parents in Afghanistan for extended periods of time while he was deployed in support of U.S. interests in that country. In addition to his wife, her parents, and relatives, he also has extended family members and friends that live in Afghanistan. He failed to demonstrate that his contacts in Afghanistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States and his connections to family members. He failed to mitigate the foreign influence security concerns raised. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 20, 2011. On December 27, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence).¹

¹ DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

Applicant answered the SOR on January 22, 2013, and elected to have his case decided on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), dated February 20, 2013, was provided to him by transmittal letter with that same date. Applicant received the FORM on April 4, 2013. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. He timely responded to the FORM on April 16, 2013, and provided additional information that was made part of the record. The case was assigned to me on April 26, 2013.

Procedural Issue

Department Counsel requested I take administrative notice of certain facts concerning the government of the Islamic Republic of Afghanistan (Afghanistan). She provided source documents (all official U.S. Government publications) to show detail and context for those facts. Applicant did not object, and I granted Department Counsel's request.

Findings of Fact

Applicant denied the factual allegation in SOR ¶ 1.a. He admitted the SOR allegation under ¶ 1.b. His admission is incorporated herein as a finding of fact. After a thorough review of the record evidence, including his answers to the SOR, the FORM, a screening questionnaire, and Applicant's four statements, I make the following findings of fact.

Applicant is a 33-year-old linguist working for a government contractor in support of deployed U.S. military forces. Applicant, his wife, and both their immediate and extended family members were born in Afghanistan. In 1989, at age 10, Applicant, his siblings, and his mother left Afghanistan and immigrated to Pakistan. They stayed in Pakistan with his paternal relatives. He attended school in Pakistan where he received his high school diploma. His father had left Afghanistan some years earlier to avoid enlistment in the Soviet Union's armed forces. His father immigrated to the United States in 1980.

In 1997, Applicant emigrated from Pakistan to the United States with his mother and siblings. He became a naturalized U.S. citizen in 2004. His father, mother, and siblings are now U.S. citizens and residents. Applicant completed some U.S. community college course work, and was certified as a medical assistant.

Applicant met his wife in Afghanistan in 2007, while attending his sister's wedding there. He married his wife in 2008, and sponsored his wife's entry into the United States that same year. She immigrated to the United States in November 2009,

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

and received her U.S. permanent resident card in May 2010. According to Applicant, his wife is in the process of applying for her U.S. citizenship.

During his June 2011 interview, Applicant told the investigator that he was departing within two days to support U.S. forces in Afghanistan. His wife traveled back to Afghanistan to live with her parents while he was deployed to Afghanistan. As of July 2011, she was residing in Afghanistan. In his April 2013 response to the FORM, Applicant indicated that his wife had been in Afghanistan during five and one-half months while he was deployed to that country, but as of April 25, 2013, she would be living in the United States. It is not clear from his statements whether she was in Afghanistan from July 2011 until sometime in April 2013, when she would return to the United States. There is no information as to whether his wife returned to the United States or whether she is still living with her parents in Afghanistan.

Applicant's father-in-law is a retired doctor, and his mother-in-law always worked at home. In 2007, Applicant started providing about \$100 to \$200 once a month or every two months in financial assistance to his in-laws to help them with their daily living expenses. He has telephonic contact with his in-laws on a monthly basis to let them know that he is doing well. Applicant indicated he has ties of affection to his wife, but not as much with his in-laws. He claimed he does not have many relatives or friends in Afghanistan, and of those, the only ones that know he works for the U.S. forces are his in-laws. Applicant believes it would be close to impossible for anyone to influence him because he does not share with anyone in Afghanistan that he is married, who he is married to, and where his wife is living.

Applicant travelled to Afghanistan to visit his family, friends, and for personal vacations in 2003, 2005 (20 days in Afghanistan in addition to spending three weeks in Pakistan), 2007 (30 days), 2008 (30 days), and 2009 (86 days). Although he claimed not having many friends and relatives in Afghanistan, in his July 2011 statement to an investigator, he disclosed at least four friends living in Afghanistan. He also disclosed numerous extended family members in that country and in Pakistan.

I take administrative notice of the following facts. Afghanistan is located in Southwestern Asia and borders Pakistan, Iran and Russia. It has been an independent nation since 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. A resistance movement eventually led to an agreement known as the Geneva Accords, signed by Afghanistan, Pakistan, the United States, and the Soviet Union, which ensured Soviet forces withdrew by February 1989. The resistance party was not part of the Accords and refused to accept it. A civil war ensued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to anarchy and the existence of warlords. The Taliban sought to impose an extreme interpretation of Islam and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin Laden, al Qaida, and other terrorist organizations.

After the September 11, 2001 terrorist attacks, demands to expel Bin Laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power in November 2001. The new democratic government took power in 2004, after a popular election. Despite that election, terrorists, including al Qaida and the Taliban, continue to assert power and intimidation within the country. Safety and security are key issues, because these terrorists target United States and Afghan interests by suicide operations, bombings, assassinations, carjacking, assaults, and hostage taking. At this time, the risk of terrorist activity remains extremely high. The country's human rights record remains poor and violence is rampant.

Civilians continue to bear the brunt of the violence and increased attacks and the country has significant human rights problems. Despite the loss of some key leaders, insurgents have adjusted their tactics to maintain momentum following the arrival of additional U.S. forces. It is suspected that the Taliban was most likely responsible for suppressing voter turnout in the August 2009 elections in key parts of the country. The Taliban's expansion of influence in northern Afghanistan since late 2007 has made the insurgency a country-wide threat.

Afghan leaders continue to face the eroding effect of official corruption and drug trade. Criminal networks and narcotics constitute a source of funding for the insurgency in Afghanistan. Other insurgent groups and anti-coalition organizations also operate in Afghanistan. Insurgents have targeted non-government organizations, journalists, government workers, and United Nation workers. Instability along the Pakistan-Afghan frontier continued to provide al Qaida with leadership mobility and the ability to conduct training and operational planning, targeting Western European and U.S. interests. The United States Department of State has declared that the security threat to all American citizens in Afghanistan remains critical as no part of the country is immune to violence. The Haqqani Network (a foreign terrorist organization), the Taliban, and al Qaida continue to operate within Afghanistan orchestrating organized attacks against U.S. personnel and assets within the country.

In May 2012, the United States and Afghanistan signed a 10-year strategic partnership agreement that demonstrates the United States commitment to strengthening Afghanistan's sovereignty and stability.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The government's concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

- (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.² Applicant, by himself or through his wife, has frequent contacts and a close relationship of affection and/or obligation with his in-laws who are residents and citizens of Afghanistan. The extent of his close relationship is demonstrated by his frequent contacts, his providing financial support for his in-laws in Afghanistan, and his frequent travel to visit with his family and friends in Afghanistan. It is also demonstrated by his wife's extended visits with her family in Afghanistan.

These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Afghan agents, criminals, or terrorists operating in Afghanistan may exploit the opportunity to obtain information about the United States. With its negative human rights record, its government, and the violent insurgency that operates within the Afghan borders, it is conceivable that Applicant's family members could be vulnerable to coercion.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying 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

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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; and

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that the above mitigating conditions do not apply. Applicant's evidence is insufficient to establish that it is unlikely he will be placed in a position of having to choose between the interests of a foreign individual and the interests of the United States. Applicant's in-laws are residents and citizens of Afghanistan. His wife has been residing with her parents in Afghanistan during extended periods of time while he was deployed to Afghanistan in support of U.S. personnel. He has frequent contacts with his wife and his in-laws, and he provides his in-laws with monthly or bi-monthly financial assistance.

Additionally, Applicant has extended family members and friends who are also citizens and residents in Afghanistan. He travelled to Afghanistan to visit his relatives, friends, and for personal vacations in 2003, 2005 (20 days in Afghanistan in addition to spending three weeks in Pakistan), 2007 (30 days), 2008 (30 days), and 2009 (86 days). Although Applicant is concerned that, if members of the community became aware of his current occupation, his wife, in-laws, and extended relatives may be in danger or placed at unnecessary risk, he continues to have frequent contact with his in-laws, provides them with financial assistance, and his wife spends significant periods of time with her parents.

In deciding whether Applicant's family members are in a position to be exploited, I considered Afghanistan's form of government.³ The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known

³ The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States.

to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with his relatives and extended family members living in Afghanistan do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Afghanistan who might be coerced by terrorists, criminals, or governmental entities in that country.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives, terrorists, or criminals from Afghanistan seek or have sought classified or economic information from or through Applicant, his wife, her parents, or other relatives living in Afghanistan. However, we cannot rule out such a possibility in the future. There is evidence of insurgency operations being conducted in Afghanistan against American forces. There is also evidence that Afghanistan has active terrorist groups operating within its borders. It is likely that terrorists would attempt to coerce Applicant through his relatives living in Afghanistan, if they determined it was advantageous to do so. This places the burden of persuasion on Applicant to demonstrate that his contacts in Afghanistan do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his connections to family members.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family members living in Afghanistan. Applicant left Afghanistan in 1989, at age 10. He immigrated to Pakistan with his mother and siblings, and remained there until 1997, when he immigrated to the United States. He became a naturalized U.S. citizen in 2004.

Applicant met his wife in Afghanistan while attending his sister's wedding in that country. His wife immigrated to the United States in 2009, and received her permanent resident alien card in May 2010. He has made the United States his home since 1997, and has been a productive U.S. citizen. Applicant, his parents, and siblings have established some connections to the United States, and they are citizens and residents of the United States. The available evidence does not establish whether all of Applicant's financial and property interests are in the United States.

In 2011, Applicant sought employment as a linguist with a government contractor supporting U.S. personnel deployed to Afghanistan. There is no evidence to determine whether he is considered to be a reliable linguist and trustworthy employee.

The record evidence fails to support a determination that Applicant's ties and sense of obligation to the United State are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even under circumstances detrimental to his wife and her relatives in Afghanistan.⁴

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline B in my whole-person analysis. Considering the evidence as a whole, Applicant's favorable evidence is insufficient to demonstrate that his contacts in Afghanistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States and his connections to family members. On balance, and considering the evidence as a whole, Applicant failed to mitigate the Guideline B 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 - 1.b:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge

⁴ See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006).