



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-09362
)	
Applicant for Security Clearance)	

Appearances

For Government: Kathryn D. MacKinnon, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

07/25/2013

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On December 20, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. 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 DOD on September 1, 2006.

Applicant answered the SOR on September 11, 2012, admitted the three allegations raised, and requested a hearing before an administrative judge. The case was assigned to me on April 24, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 1, 2013, setting the hearing for June 4, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1-6.

Applicant objected to the fifth and sixth documents offered on the basis that, as journalistic and Internet-based information, respectively, they constituted hearsay. Recognizing the nature of the documents, I accepted GE 5 and a modified GE 6, according them appropriate weight. (Transcript (Tr.) at 19-26) In the form of a request for administrative notice regarding the country at issue, it also offered a Hearing Exhibit (HE) marked as HE-1, which was accepted without objection. Applicant testified and offered eight documents, which were received without objection as Exs. A-H. Two additional documents were accepted as Exs. I-J without objection the next day. The record was closed upon receipt of the hearing transcript on June 13, 2013.

Procedural Ruling

I take administrative notice of facts relating to Afghanistan. They are set forth in documents offered by Department Counsel, marked as HE 1. The facts administratively noticed are those limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant is a 53-year-old linguist who has worked for the DOD for over a year-and-a-half. Growing up in Afghanistan, Applicant's father worked for the former king's government and his mother was a writer. Having been loyal to the last king of Afghanistan through the 1970s, Applicant's family did not approve of the upcoming changes in their country. After the communist takeover in the late 70s, the family began fleeing Afghanistan in the early 1980s, about the time of the Soviet war in Afghanistan. (Tr. 51) Over time, his family immigrated to the United States. All of Applicant's immediate family, including his parents and siblings, are naturalized U.S. citizens living in the same state as Applicant. They lead ordinary, suburban lives. Applicant moved to the United States in 1988, married in 1991, and became a naturalized U.S. citizen in 1994. In 2003, he took his last leisure trip to Afghanistan. During that trip, he belatedly received a master's degree in engineering that he had earned in the 1980s. Like the rest of his family, he has led a routine suburban life.

Applicant has no contact with or knowledge of extended family or family friends remaining in Afghanistan. As a whole, his side of his family has no notable contact with Afghanistan or its citizens. They have lived contentedly as U.S. citizens and residents for a quarter of a century or more.

Applicant's wife is apolitical. His three children were born in the United States and have a broad range in ages, with the eldest attending college while the youngest is preschool. His current work keeps him away from his home and at a secure worksite most of the year, during which time he has little contact with his wife and children. Applicant presently earns about \$96,000 a year. He has owned the same home in the United States for over a decade. His wife, who has a part-time job, contributes an additional income of about \$10,000 to the family coffers.

Married for 22 years, Applicant met his wife's father a "long time ago." (Tr. 34) Applicant's father-in-law was appointed to a high profile political position by a high ranking Afghani official in the late 2000s. From about 1990 until about 2007, Applicant and his wife had regular contact with Applicant's in-laws as they lived in the same suburban area. Around 2007, contact became minimal when Applicant's father-in-law returned to Afghanistan to assume his political appointment. (Tr. 69) The father-in-law was eventually assassinated. The assassination is believed to have been a symbolic act by the Taliban to show the current Afghani administration as weak. (Ex. 5 at 4) Applicant never had a genuine relationship with his father-in-law. His wife was "out of touch" with her father during the time leading to his death. (Tr. 60)

Applicant's mother-in-law splits or used to split her time between the United States, where she has a green card and has applied for U.S. citizenship, and Afghanistan, where she is a noted activist. She is in her 60s. Applicant does not follow her career or her travel, if any. They have had minimal contact over the years. He last saw her about two years ago at a family wedding in the United States. Applicant and his wife do not discuss the mother-in-law. He notes that he is too busy with his own life to follow his mother-in-law's life. (Tr. 35.) The mother-in-law does not know what he does for a living.

Applicant has two sisters-in-law who are citizens and residents of the United States. At one point, one of the women operated a business in Afghanistan with the other woman's help. The two women often traveled back and forth between the U.S. and Afghanistan. He does not believe they currently travel between countries or maintain the business. He does not know anything definitive about their current activities or their former business. They have little to no contact with Applicant. He last saw them about two years ago at a family wedding in the United States. They do not know what he does for a living. In describing his life, Applicant noted: "I just work, eat, and sleep. I have no business with anybody. . . . And I have no contact with [my in-laws]. I always visit with my own wife [when in the United States.]" (Tr. 42)

Applicant is highly regarded for his work. His most recent assessment has him rated as outstanding in seven areas and as exceeding criteria in the three remaining areas of evaluation. (Ex. H) His team leader notes the excellence of Applicant's work, his dedication, his commitment to long hours, and his willingness to put his own life on the line in pursuit of the mission. (Ex. A) He writes that Applicant is "the most capable linguist on the base and the best linguist I have ever worked with." (Ex. A) He further notes that Applicant "has the ability to translate more than one conversation at a time and translate while the other is still speaking, which is a rare and very extraordinary skill most linguists lack." (Ex. A). Applicant's commanding officer gives him a glowing recommendation. (Ex. B) A sergeant from his company writes that Applicant is honest, effective, trustworthy, and has a unique talent for conversation with those under observation. (Ex. C). His high reputation precedes his work with the defense industry. A former engineering associate, who has known Applicant since 1994, describes him as a hard working, diligent, and motivated individual who quickly rose within their company. He further notes that Applicant had keys and a security card at work, and that he

handled his access with responsibility. (Ex. D) A neighbor, who has known Applicant and his family for a decade, describes Applicant as friendly and honest. (Ex. E)

Administrative Notice

I take administrative notice of the following facts, as derived from HE 1 with regard to Afghanistan. They represent highlights from that exhibit, but HE-1 was considered in its entirety.

Afghanistan has been an independent nation since 1919. However, in 1989, a civil war ensued with the departure of the Soviet Union's forces, who had occupied Afghanistan for ten years. In the mid-1990s, the Taliban rose to power. The Taliban were forced out of power in 2001 by U.S. forces and a coalition partnership. After a few years of control by an interim government, democratic elections took place in 2004 and again in 2009.

Despite this and other progress made since the Taliban was deposed, Afghanistan still faces many daunting challenges, principally defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economical, and political infrastructure. The risk of terrorist activities in Afghanistan remains extremely high. Various groups, including the Taliban, oppose the strengthening of a democratic government and do not hesitate to use violence to achieve their means. No section of Afghanistan is safe or immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other Western nationals at any time. In addition, the country's human rights record remains poor.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching 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 not drawn 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard 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 related to 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.

The following disqualifying conditions under AG ¶ 7 are relevant:

(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.

In these cases, the relationship between a spouse and his or her immediate relatives is generally imputed upon an Applicant. Here, it may be assumed that Applicant's wife has a normal relationship with her mother and sisters. Consequently, Applicant's wife's relationships with her mother and siblings is imputed upon Applicant for the purposes of raising security concerns, thus raising disqualifying conditions AG ¶¶ 7(a) and (b).

The foreign influence guideline also includes factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 8, especially the following:

(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 United States; 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.

The mere possession of close family ties to persons in a foreign country is not, as a matter of law, disqualifying under Guideline B. The question is whether contacts with these individuals (mother-in-law and two sisters-in-law) are sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Here, Applicant's in-laws mainly live in the United States. The three women formerly commuted between the United States and Afghanistan with some regularity. Having so little contact with them in recent years, however, Applicant does not know if they continue with such travel. He believes his sisters-in-law do not. In general, he takes no interest in these relations.

The burden in these proceedings, however, is on the Applicant. Here, Applicant has not provided persuasive evidence that his in-laws no longer travel to Afghanistan. A letter or testimony from one of the women or his wife could have addressed this issue. Lacking such evidence, it must be assumed one or more of these women still maintain an intermittent presence in Afghanistan, thus creating the potential for foreign influence.

The question remains if that potentiality could lead to the compromise of classified information.

It is undeniable that Afghanistan has an on-going issue with maintaining political and economic stability in the face of opposition factions, including terrorist organizations such as the Taliban. This factor raises the level of scrutiny in this case.

While Applicant's wife's relationships with her mother and sisters can be attributed to Applicant, Applicant acknowledges that his in-laws have made themselves notable in Afghanistan as opponents of those who threaten democratic stability in Afghanistan. His father-in-law left a quiet, suburban life in the United States to help rebuild Afghanistan. For his efforts, he was assassinated. However, it appears he was killed as the incumbent of his particular and high profile political position, not for being who he was. This seems to be somewhat reinforced by the fact that, for at least a few years, his widow and daughters maintained a periodic presence in Afghanistan without incident. His in-laws have a long-standing and selfless commitment to Afghanistan and its freedom; they bow to no external forces. The likelihood that Applicant would ever have to choose between one of these in-laws and the United States is highly unlikely.

Applicant's family comes from a family that has long supported a free Afghanistan and opposed both communist and terrorist factions there. However, they are not political activists. They have quietly lived in suburban United States for about a quarter of a century.

In accepting his current position with the Department of Defense, Applicant chose to forsake a career in engineering. Instead, he made a noble and selfless choice to support the missions of the United States. This choice has left him working exceptionally long hours, in strained circumstances, and constructively estranged from his wife for nearly two years while earning a commensurately moderate salary. His superiors have noted his commitment and diligence in his work. His willingness to risk his own life in pursuit of the mission has also been noted. His testimony credibly expressed his general disinterest in the works of his in-laws and reinforced what the record shows to be a selfless dedication to his present work. In light of these considerations, it is unlikely that Applicant would have to choose between the interests of his in-laws during any future visits to Afghanistan and the interests of the United States. AG ¶ 8(a) and 8(b) apply.

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). 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. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 53-year-old engineer turned linguist who has served the Department of Defense for over a year-and-a-half with distinction. He is a well-rated employee. His superiors describe him as an honest, reliable, trustworthy, and talented linguist with highly advanced and unique skills in his field.

Applicant's father-in-law was assassinated while serving in the Afghani government. However, it appears he was killed not for being who he was or being a member of his family, but because of the position he held. Since his assassination, there have been no additional incidents involving foreign factions and Applicant's in-laws' family. Meanwhile, Applicant has put his own life on the line in his work. He did so by intentionally turning his back on the comfort of home in favor of aiding this country. As noted by the Appeal Board, an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case. (ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007)).

Overall, the record evidence leaves me with no doubts about Applicant's ability to find for the United States should there ever be a question of him choosing between his in-laws and this country. I similarly have no reservations regarding his eligibility and suitability for a security clearance given the unique facts presented in this case. For all these reasons, I conclude Applicant mitigated the security concerns arising under the foreign influence guideline.

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: FOR APPLICANT

Subparagraphs 1.a-1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge