



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-09415
)
)
Applicant for Security Clearance)

Appearances

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

February 21, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 10, 2011. On August 16, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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 after September 1, 2006.

The Applicant acknowledged receipt of the SOR on September 4, 2012. He answered the SOR in writing on September 4, 2012, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on December 14, 2012. The Applicant responded to the FORM on January 8, 2013. He stated the following: "No information to add to this package. I am currently in AFGHANISTAN working as a linguist for the US ARMY and as a federal contractor." Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated September 4, 2012, the Applicant admitted the factual allegations in all the Paragraphs of the SOR, without explanations

Foreign Influence

1.a. The Applicant's mother is a citizen and resident of Afghanistan. (Item 5 at pages 18~19.) She is a "home maker." (Item 7c at page 1.)

1.b. and 1.c. The Applicant's two brothers and one sister are citizens and residents of Afghanistan. (Item 5 at pages 24~28.) The Applicant's sister is a "home maker." (Item 7c at page 1.) The Applicant's older brother "is an unemployed former farmer." (Item 7c at page 1.) The Applicant's younger brother is a "construction truck driver." (*Id.*) This younger brother "was a former intelligence officer." (Item 7c at page 2.) In his November 2011 subject interview, the Applicant "added" the following regarding his younger brother:

. . . the Taliban was aware of . . . [this younger brother's] involvement with the Afghanee [sic] intelligence program and attempted to assassinate . . . [his younger brother] on several occasions. He presently resides in . . . Afghanistan and does not leave his home for fear of assassination. (*Id.*)

1.d. The Applicant admits that his two sister-in-laws are citizens and residents of Afghanistan.

I also take administrative notice of the following facts. 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. However, 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. However, despite some tactical defeats and operational setbacks in 2010, the Taliban have continued to threaten United States and international goals in Afghanistan.

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

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraphs 7(a) and 7(b) are applicable: 7(a) “*contacts with a foreign family member . . . 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 7(b) “*connections to a foreign person . . . 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 . . . by providing that information." The Applicant's mother, two brothers, a sister, and two sisters-in-law are citizens and residents of Afghanistan. His younger brother is a former intelligence officer, who is on the Taliban's hit list. I can find no countervailing mitigating condition that is applicable here. The first mitigating condition under Paragraph 8(a) is applicable where "*the nature of the relationships with foreign persons, . . . 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 . . . and the interests of the U.S.*" If the Applicant's younger brother is taken by the Taliban, it is likely that the Applicant may "be placed in a position of having to choose between the interests of a foreign individual . . . and the interests of the U.S."

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. 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.

The Administrative Judge should also 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.

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Although it is clear that the Applicant is of great service to the United States in Afghanistan, as evidenced by accolades from those with whom he serves in Afghanistan (Item 8b); overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has not mitigated the security concerns arising from his Foreign Influence.

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
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	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.

Richard A. Cefola
Administrative Judge