



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



In the matter of:)
)
) ISCR Case No. 12-09418
)
)
Applicant for Security Clearance)

Appearances

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

04/02/2014

Decision

MASON, Paul J., Administrative Judge:

Applicant has not mitigated the Government’s security concerns under the foreign influence and personal conduct guidelines. Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on January 23, 2012. On August 20, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B) and personal conduct (Guideline E). The action was taken pursuant to 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 in DOD on September 1, 2006.

Applicant submitted his answer to the SOR on September 13, 2012. He elected to have his case decided on an administrative record. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on December 9, 2013. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He received the FORM on December 30, 2013. His response was notarized on January 8, 2014, and received by DOHA on January 22, 2014. On January 24, 2014, the Government indicated it did not object to Applicant's responses to the FORM. The case was assigned to me on January 31, 2014.

Rulings on Procedure

The Government requested that I take administrative notice of facts about the Islamic Republic of Afghanistan. The Government provided a memorandum citing the source documents, e.g., Government reports, that confirm these facts. Administratively noticed facts are limited to matters of general knowledge that are not subject to reasonable dispute. I take administrative notice of facts related to Afghanistan.

Findings of Fact

The SOR has six allegations under the foreign influence guideline (§ 1) and two allegations under the personal conduct guideline (§ 2). Applicant admitted all allegations under SOR § 1. He denied SOR § 2.a, explaining that he did not know about any judgments except the one alleged in SOR § 2.b, which he admitted. He explained that the judgment in SOR § 2.b was filed against him, his wife, and the corporation for not paying rent after he closed his failing business and deployed to Afghanistan in February 2012.

After a review of the record in this case, including Applicant's answer to the SOR, the FORM and Applicant's response to the FORM, I make the following additional factual findings. Applicant is 45 years old and married with two children. The e-QIP that he certified on February 8, 2012, is his first application for a security clearance.

Foreign Influence

Applicant was born in Afghanistan in 1968. He enrolled in an Afghan nursing school in 1985 and was awarded a nursing degree in January 1989. His enrollment in the nursing school exempted him from Afghan military service. After receiving his degree in January 1989, he paid a Pakistani smuggler to forge an Afghan passport which Applicant used to immigrate to the United States (U.S.) for additional education and more opportunities. His parents financed the forged passport and his airline transportation to the United States.

In October 1992, Applicant married a South Korean citizen in the United States. She has a degree in social work that she received in the 1980s. She gave birth to a daughter in May 1995 and a son in November 1996. The children were born in the United States and are U.S. citizens. The children are now 18 and 17 years of age, respectively. On May 3, 2001, Applicant became a naturalized U.S. citizen.¹ In May 2006, he traveled to Afghanistan and three other countries to visit his family members.

Applicant's father, a resident citizen of Afghanistan, was employed as a cosmetics salesman. He passed away in approximately August 2013. Applicant's contacts with his father were about once every two months. Applicant's mother, a resident citizen of Afghanistan, is 66 years old. (SOR ¶ 1.a) She is an unemployed housewife whom Applicant contacts about once every two months.

Applicant has three brothers who are resident citizens of Afghanistan. (SOR ¶ 1.b) His 44-year-old brother is an unemployed nurse that Applicant contacts about once a month. His 40-year-old brother operates a grocery store. Applicant contacts him about once every two months. His 32-year-old brother is a business contractor that Applicant contacts about once every two months.

Applicant's 42-year-old sister is a resident citizen of Afghanistan. (SOR ¶ 1.c) She is an unemployed housewife that Applicant contacts about once every two months. Applicant's three sisters-in-law (married to his three brothers identified at SOR ¶ 1.b) are resident citizens of Afghanistan. (SOR ¶ 1.d) His 42-year-old sister-in-law is a teacher. He contacts her about once every three months. His 40-year-old sister-in-law is a housewife, and he contacts her about once every three months. Applicant's 28-year-old sister-in-law is a housewife that he contacts once every three months. Applicant has an uncle, a resident citizen of Afghanistan, who is a truck driver. (SOR ¶ 1.e) Applicant contacts him about once every six months. Between 1990 and the present, Applicant provided about \$11,000 in financial support to his family in Afghanistan. (SOR ¶ 1.f).² It does not appear that any of Applicant's relatives are associated with or employed by the Afghan or any foreign government.

In his response to the FORM dated January 8, 2014, Applicant indicated his uncle's family of six lives in the United States. The uncle's name does not appear on Applicant's relatives and associates questionnaire which he submitted to his employer on January 23, 2012. Applicant identified a second uncle that has a family of five living in the United States, and has children attending college. This uncle's name does not appear in Applicant's relatives and associates questionnaire. There is no way to determine whether either uncle is the same uncle that is alleged at SOR ¶ 1.e. Finally, Applicant noted that his cousin and family of six, and his cousin and family of five, live in the United States. However, their names do not appear on the relatives and associates

¹ Item 3 at 7.

² Pursuant to E3.1.17, Enclosure 3 of the Directive, the allegation is amended to read SOR ¶ 1.f.

questionnaire Applicant submitted on January 23, 2012. Applicant's mother-in-law is a naturalized U.S. citizen. His brother-in-law is a permanent resident of the United States. (FORM; Response to FORM)

Applicant did not believe the money he provided his mother and father over the last 20 years came close to what the average amount that an American spends during the December holidays each year. Applicant did not comment on the \$4,000 that he provided to one of his brothers since 2007, and \$7,000 he provided to the other brother between 1990 and 2006. See SOR ¶ 1.f.

Applicant noted that the relatives identified in the SOR are not aware he is present (and working) in Afghanistan. He stated that he only contacts them through Skype communication about once every six to eight months. (Response to FORM)

Personal Conduct

In November 1997, Applicant became manager of a restaurant in the United States. This business dissolved in August 2000.³ On January 12, 2006, the restaurant was reincorporated and reopened under a different name at the same business address location when the business dissolved in August 2000.⁴ (SOR ¶ 2.a) Corporate documents filed with the secretary of state indicate that Applicant's wife is the registered agent. Coincidentally, the restaurant's name when the restaurant reopened in 2006 is the same as Applicant's 18-year-old daughter. As of January 2013, the business was still active. Three additional food businesses were incorporated and reopened at the same address between 2006 and 2011.⁵ (SOR ¶ 2.a) The second opened in January 2007 and dissolved in July 2011.⁶ The third opened in March 2008, and dissolved in July 2011.⁷ The fourth opened in December 2010, and is still in an active status at the same address.⁸ State and federal tax liens were filed against the restaurant businesses between January 2007 and November 2011. The liens and unpaid judgments, including a \$36,750 state workers compensation judgment filed on September 29, 2008, total more than \$60,000.⁹

³ Item 11.

⁴ Item 10.

⁵ Items 11-14.

⁶ Item 12.

⁷ Item 13.

⁸ Item 14.

⁹ Items 5-9, 18-32.

In his response to the FORM, Applicant stated that none of the businesses between 1999 and July 2010 were registered in his name. However, he stated:

But I was running the business starting from 2006 and I admit I am responsible for all the charges starting from [business named after Applicant's daughter][.] [My] wife and my accountant are working on all of them to clear one by one starting from [alternate name of business] and she already star[t]ed making payments since 2012 but most of the charges are filed either by mistake [or] are over charged but they are working on it to clear every thing out the soonest.

(Response to FORM) Applicant indicated that the accountant told his wife that there were misstatements regarding the restaurant workers' compensation insurance judgment. Applicant stated that while he had the appropriate workers' compensation insurance in place when he operated the business, he was new to the business and did not know he had to send a copy of the insurance form (proof of coverage) to the state agency. He provided no documentation to support his claims that the sales tax liens were mistakenly filed or overcharged. There is no evidence in the FORM to show the worker's compensation judgment of \$36,750 (Item 28) filed in September 2008, was vacated or reduced. The FORM does reflect that a state tax lien of \$3,544, filed in September 2009, was released in November 2009. Likewise, a state tax lien of \$1,568, filed in October 2010, was released in April 2013.¹⁰ However, a federal tax lien of \$5,738, filed on May 4, 2010, and a federal tax lien of \$6,912, filed January 31, 2011, have not been addressed.¹¹

Applicant explained that one business was registered in his name from March 3, 2010, until its closure on December 31, 2010. Another business began at the same business location in March 2011, and was closed on December 31, 2011. Applicant provided several cancelled checks that indicate he has paid some debts related to the two businesses in which he was the registered agent. On September 17, 2012, he paid \$2,170 in sales tax to the state tax agency and was informed he still owed a \$32 balance. He also paid \$1,978 on October 22, 2010, to the state finance agency. He paid \$132 to the state finance agency on January 18, 2013. He noted that he could only resolve a limited number of debts at a time. Both of these businesses were located at a business address not connected to the restaurants involved in SOR ¶ 2.a. (Response to FORM)

In March 2010, Applicant signed a lease that was scheduled to end in March 2020. (SOR ¶ 2.b) The business was registered in Applicant's name. He broke the lease and informed the landlord that he could keep the three-month deposit. The landlord filed a lawsuit and obtained a judgment for \$35,750. The judgment was vacated on

¹⁰ Item 31.

¹¹ Items 30, 32. Applicant did not disclose his May 2010 federal tax lien on his February 2012 e-QIP.

November 21, 2012, because Applicant had not been effectively served.¹² SOR ¶ 2.b is resolved in Applicant's favor.

Character Evidence

Applicant admitted that he had some feelings for Afghanistan, his birth country, but he could not live there again. He indicated he had some concerns for his own safety and his family's safety if he were to work for the United States in Afghanistan, but he would comply with the appropriate regulations to ensure his safety.

Applicant explained that the remaining members of his family want to come to the United States, but every time he applied for his brothers, the immigration requirements changed.

Applicant believes he has been doing a good job while working as a linguist in Afghanistan since February 2012. He considers himself a loyal American who deserves a security clearance to continue to perform his job.

On December 6, 2013, Applicant received a certificate of merit for his deployment in Afghanistan between February 2012 and December 2013. The certificate commended Applicant for his dedicated attitude, willingness to contribute to the success of the mission, and continual acceptance of additional responsibility.

Administrative Notice

Afghanistan is an Islamic republic. Formerly a possession of Great Britain, the country received its independence in August 1919. In December 1979, the Soviet Union invaded Afghanistan. Resistance to communist rule led by the Afghan freedom fighters led to the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union. The middle 1990s saw the rise of the Taliban after the Soviet withdrawal. The Taliban grew in strength and imposed a strict interpretation of the Koran, leading to the commission of serious human rights violations.

After the September 11, 2001 terrorist attacks, a coalition of countries headed by the United States, drove the Taliban out of power by November 2001. Following a few years of an interim government, a democratic presidential election took place in October 2004. Despite the election, the government still had to contend with the Taliban and also al-Quaida, and other terrorist organizations who were continuing to target U.S. and Afghan interests through hostage taking, bombings and assassinations. An increasing amount of terrorist support has been infiltrating Afghanistan from Pakistan and Iran. The potential for random or targeted violence against Western interests in any part of Afghanistan at any time cannot be underestimated. In February 2012, an officer of the

¹² Short Form Order dated November 29, 2012, and journalized in the clerk's docket on December 4, 2012.

Afghan government killed two American officers in the city where Applicant's relatives live.

Afghanistan's human rights record is poor due to the extrajudicial killings, official corruption, ineffective investigations by government security forces, discrimination against women, and restrictions on freedoms of assembly and press.

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 must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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."

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.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security concern of the foreign influence guideline:

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 U.S.

citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains two disqualifying conditions that may be pertinent in this case:

(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 individual's desire to help a foreign person, group, or country by providing that information.

Applicant's mother, three brothers, sister and three sisters-in-law, and an uncle, are resident citizens of Afghanistan, a country where terrorist organizations like the Taliban and al-Quaida frequently target U.S. and Afghan interests through suicide operations, bombings and hostage taking. Applicant has provided approximately \$11,000 to members of his family between 1990 and the present. If the Afghan government or insurgents wanted to expose Applicant to undue influence, it could direct pressure on his foreign family members. His ties and contacts with his family members between once a month and once every six to eight months raise a heightened risk of foreign exploitation, and a potential conflict of interest between his ties to his family and his desire to protect them in Afghanistan and his obligations to safeguard classified information. AG ¶¶ 7(a) and 7(b) apply.

The burden shifts to Applicant to present evidence under AG ¶ 8 that demonstrates he is unlikely to be placed in a position of having to choose between his family members and U.S. interests. The pertinent mitigating conditions are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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 minimal, or the individual has such deep and long-lasting 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.

Applicant has six immediate family members who are resident citizens of Afghanistan, a country with a poor human rights record and an elevated risk of terrorism. One of those immediate family members could be pressured in a way that would put Applicant in a position of having to choose between his family member and the interests of the United States. AG ¶ 8 (a) does not apply.

In determining the applicability of AG ¶ 8(b), I have considered whether Applicant's sense of loyalty to his immediate family members in Afghanistan is minimal compared to his relationships to the United States. Applicant's sense of loyalty and affection to his immediate family members is demonstrated by his continuing financial support to his family between 1990 and the present. The first prong of AG ¶ 8(b) is inapplicable.

Applicant has lived in the United States since January 1989. In 1992, he married his wife, a resident alien. His two children are U.S. citizens. Though he mentioned that two uncles and two cousins have family in the United States, Applicant provided insufficient personal information about their citizenship status, the period of time they have resided in the United States, and other probative personal information. Other than his restaurants that he has operated from 2006 to 2011, he has submitted negligible information concerning relationships and loyalties developed in the United States since his immigration to this country in 1989. It is not clear that his relationships in the United States are sufficiently strong enough to expect him to consistently resolve any conflict of interest in favor of U.S. interests. AG ¶ 8(b) is only partially applicable.

AG ¶ 8(c) does not apply. Applicant has been in contact with his immediate family members on a fairly frequent basis. Even though the frequency of contact may have decreased when he deployed in February 2012, the contact is not casual and infrequent to the point that there is "little likelihood that it could create a risk for foreign influence or exploitation." Applicant has not mitigated the security concerns under the foreign influence guideline.

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

AG ¶ 15. 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.

AG ¶ 16 contains two disqualifying conditions that are relevant to Applicant's conduct:

AG ¶ 16(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information; and

AG ¶ 16(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent, or other behavior in the workplace; (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of government or other employer's time or resources.

The record reflects that Applicant operated at least four restaurant businesses between 2006 and 2011. Between 2007 and 2011, the state and federal tax agencies filed liens against his businesses for failure to pay taxes. In September 2008, the state workers' compensation board filed a judgment for \$36,750. Applicant owes more than \$60,000 in liens and judgments. Applicant demonstrated a pattern of poor judgment and rules violations. AG ¶¶ 16(c) and 16(d) apply.

There are two mitigating conditions under AG ¶ 17 that are potentially applicable to the circumstances in this case. Those conditions are:

AG ¶ 17(c) the offense was so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy,

unreliable or other inappropriate behavior, and such behavior is unlikely to recur.

After initially indicating in his answer to the SOR that he did not know about any judgment except for the leasehold judgment identified in SOR ¶ 2(b), Applicant admitted his responsibility for liens and judgments enumerated in SOR ¶ 2(a). His payment of several sales tax obligations related to other businesses not referenced in SOR ¶ 2.a is acknowledged. However, coupled with his acceptance of responsibility for the listed state and federal liens and judgments is his claim that most of the liens and judgments are based on incorrect or flawed information. The lack of documentary support undermines Applicant's contention. The total in listed taxes and judgments he owes is not minor. In addition, he has taken no documentary steps to pay off the liens and judgments. AG ¶ 17(c) does not apply. AG ¶ 17(d) has only limited application.

Whole-Person Concept

I have evaluated the evidence under the disqualifying and mitigating conditions of the foreign influence and personal conduct guidelines. I have also weighed this case within the context of the nine general factors of the whole-person concept. Those factors, set forth in AG ¶ 2(a) 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 the participation was 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the specific guidelines and nine factors under the whole-person concept.

Applicant is 45 years old. He immigrated to the United States in 1989, and became a naturalized U.S. citizen in November 2001. He is married to a U.S. permanent resident. He and his wife have raised two children who are U.S. citizens. He has two uncles and two cousins with families in the United States. Applicant's mother-in-law is a naturalized citizen of the United States, and his brother-in-law is a permanent resident of the United States. In December 2013, Applicant was recognized for his good performance as a linguist since February 2012. However, he still has ties and contacts to six immediate family members who are resident citizens of Afghanistan, a country where government operatives, terrorists, and criminals continue to target U.S. and Afghan interests, and would not hesitate to exert pressure on Applicant through his

family members if they determined it was advantageous to do so. The foreign influence concerns have not been mitigated.

The personal conduct concerns have not been mitigated either. Between 2007 and 2011, Applicant accumulated over \$60,000 in state and federal liens and judgments because of his poor business practices. He initially denied knowing that he had any judgments other than the landlord judgment described in SOR ¶ 2.b. Although a federal tax lien was filed against him in May 2010, he denied owing any federal debt in his February 2012 e-QIP. Claiming that most of the liens and judgments are incorrect is not credible due to the absence of evidence that explains why the liens judgments are incorrect. Considering all the evidence under the disqualifying and mitigating conditions in the context of the whole-person concept, Applicant has not mitigated security concerns associated with the foreign influence and personal conduct guidelines.

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 (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2 (Personal Conduct)	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant
Subparagraph 2.b:	For 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.

Paul J. Mason
Administrative Judge