



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



In the matter of:)	
)	
)	ISCR Case No. 12-09691
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
 For Applicant: Paula Phinney, Esquire
 Corey Williams, Esquire

June 27, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on November 29, 2011.¹ On September 14, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, C and E 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.

Applicant acknowledged receipt of the SOR on October 28, 2012. He answered the SOR in writing on October 30, 2012; and originally requested a Decision without a

¹Applicant signed his e QIP twice, on November 16, 2011, and again on November 29, 2011. He added two foreign contacts and a monthly budget, and also made minor corrections to the document.

hearing, but retained counsel on February 19, 2013 and requested a hearing before an Administrative Judge. DOHA received the request on February 19, 2013, and I received the case assignment on April 1, 2013. DOHA issued a notice of hearing on that same date, and I convened the hearing as scheduled on May 7, 2013, when Applicant returned from Afghanistan for four days. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through E, which were received without objection. DOHA received the transcript of the hearing (TR) on May 16, 2013. I granted Applicant's request to keep the record open until May 28, 2013, to submit additional matters. On May 22, 2013, he submitted Exhibits F through J, which were received without objection. The record closed on May 28, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Afghanistan. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.a.~1.g., and 2.a.~2.e. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 3.a.~3.c. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

In 1980, Applicant came to the United States with his family as a twenty year old, fleeing the Russian invasion. (TR at page 85 line 7 to page 88 line 1.) He became a U.S. citizen in August of 2007. (GX 1 at page 6.)

Guideline B - Foreign Influence

1.a., 1.c. and 1.f. Applicant's brother is a U.S. citizen, but resides in Afghanistan. (TR at page 43 lines 9~24, and GX 1 at page 23.) He suffers from schizophrenia. (TR at page 45 lines 6~12.) Applicant's brother lived with their parents in the United States; but once they passed away, in about 2007, he returned to Afghanistan to live off the proceeds of their parent's agricultural land. (TR at page 44 line 22 to page 51 line 1.) Appellant cannot be pressured or coerced vis-a-vis his brother, with whom he has very little personal contact; and who refuses to return to the United States, despite repeated requests from Applicant for him to do so. (*Id.*, and TR at page 111 lines 6~17.)

Applicant has a close friend who is a German citizen, but resides part of the year in both Germany and Afghanistan. (TR at page 51 line 25 to page 53 line 16, and at GX 1 page 28.) He is a restaurateur. (*Id.*, and TR at page 55 line 2 to page 56 line 10.) This friend budgets the proceeds from Applicant's deceased parent's agricultural land, worth about \$300,000, for Applicant's brother's use. (TR at page 102 line 25 to page 107 line 2, and at page 117 line 21 to page 119 line 10.)

1.b. Applicant mother's cousin is a citizen of and resides in Afghanistan. (TR at page 51 lines 2~24, and GX 1 at page 23.) "She's an old, poor widow," with whom Applicant had last contact about "two years ago," when he gave her between \$50~\$100 through his brother. (*Id.*, and TR at page 115 line 17 to page 116 line 20.)

1.c. Applicant's son, a citizen and resident of the United States, plays for the Afghanistan National Basketball team. (TR at page 61 line 21 to page 67 line 20.) The team is "made up of young Afghan-Americans." (AppX 3 at page 6.)

1.d. and 1.f. Applicant maintain's contact with a lawyer who is a citizen and resident of Afghanistan. (GX 2 at page 2.) The attorney is handling a land dispute for Applicant as to land Applicant and his four siblings inherited from their parents, worth between \$100,000~\$150,000. (TR at page 56 line 11 to page 61 line 20, at page 108 line 25 to page 109 line 18, and at page 119 line 11 to page 120 line 3.) There is also another parcel of agricultural land, worth about \$200,000, that is tied up in a dispute with local farmers. (TR at page 108 lines 12~24, and GX 3 at page 8.)

1.g. Applicant maintains three bank accounts in Afghanistan. (GX 1 at page 29.) One is co-signed with Applicant's German friend, the proceeds from which go to Applicant's brother, as noted above. (TR at page 53 line 17 to page 55 line 1.) The other two accounts are valued at about \$6,000 and \$2,800, respectively. (TR at page 116 line 21 to page 117 line 12.) Applicant has U.S. banking accounts worth about \$36,250, and a U.S. investment account worth about \$15,605. (AppXs C and G.) His U.S. home is worth about \$300,000. (TR at page 90 line 16 to page 91 line 12.)

Guideline C - Foreign Preference

2.a.~2.e. Applicant does not consider himself a dual national with Afghanistan, but he did possess an Afghan identification card, in order to pursue the land disputes noted above. (TR at page 67 line 21 to page 68 line 10, at page 68 line 22 to page 69 line 6, and at page 100 line 12 to page 102 line 24.) He also resided in Afghanistan, off and on, from February of 2008 until July of 2011, in order to address the land disputes noted above. (TR at page 74 line 11 to page 75 line 2.) Most recently, Applicant has formally renounced his Afghan citizenship. (AppX F.)

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.

Guideline E - Personal Conduct

3.a. On his November 29, 2011 e-QIP, Applicant answered, “No,” to Section 10: Citizenship Information, averring that he was never a dual national with Afghanistan. (GX 1 at page 7.) He asked those who were processing his paperwork to become a linguist if he was considered a dual national. He was told that as he had no foreign passport, he was not a dual national. (TR at page 75 line 14 to page 80 line 6, and at page 111 line 24 to page 112 line 9.) Twenty days later, on December 19, 2011, the Applicant explained the particulars of his nationality. (*Id.*, and GX 3 at page 2.) As noted, above, although he has formally renounced any Afghan citizenship he may have, he does not consider himself a dual national.

3.b. On his November 29, 2011 e-QIP, Applicant also answered, “Yes,” to Section 20, Item 20A: Foreign Financial Interests, disclosing that he held two savings accounts in Afghanistan. (GX 1 at pages 28~29.) He simply forgot about his additional \$2,800 bank account noted above. (TR at page 80 line 7 to page 82 line 20, and at page 112 lines 10~23.) Twenty days later, on December 19, 2011, the Applicant disclosed the third smaller account. (*Id.*, and GX 3 at page 7.)

3.c. On his November 29, 2011 e-QIP, Applicant also answered, “Yes,” to Section 20, Item 20A: Foreign Financial Interests, disclosing land that he had inherited and sold, but failed to disclose the two land disputes noted above. (GX 1 at page 29.) He told those processing his paperwork that there was no space to disclose the land disputes. (TR at page 82 line 21 to page 85 line 6, and at page 112 line 24 to page 115 line 1.) He was told he could disclose the land disputes during his interview, which he did, twenty days later, on December 19, 2011. (*Id.*, and GX 3 at page 8.)

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 Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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, Paragraph 7(a) is applicable: “*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.*” Applicant has an Afghan attorney representing him in a property dispute. His brother and a German friend also reside in Afghanistan. This is countered, however, by the first mitigating condition, as “*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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.*” Applicant’s lawyer, brother and friend have no connection with the Afghan government. However, the disqualifying condition found in Paragraph 7(e) is arguably applicable. Applicant has “*substantial . . . financial, or property interest*” in Afghanistan as evidenced by two land disputes. This is countered by Paragraph 8(f), as “*the value . . . of the foreign . . . financial or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.*” These land disputes may never bear fruit, and he has significant property interests in the United States; i.e., his home, bank accounts and an investment account.

Guideline C - Foreign Preference

Paragraph 9 of the adjudicative guidelines sets out the security concern relating to Foreign Preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Subparagraph 10(a)(1) is applicable: “*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (5) using foreign citizenship to protect financial . . . interests in another country.*” Here, the Applicant maintained his Afghan ID card in order to pursue his land disputes. This is clearly countered, however, by the mitigating conditions found under Subparagraph 11(b). Subparagraph 11(b) notes that where “*the individual has expressed a willingness to renounce dual citizenship,*” this is mitigating. Applicant has renounced whatever Afghan citizenship he may have had.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 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.*”

I find no Disqualifying Condition that is applicable here. The Applicant testified credibly that he was just following what guidance he was given when filling out he e-QIP. He disclosed all of the information that the SOR avers as the Government's concerns twenty days later, spontaneously, during his subject interview. Personal Conduct is found for the Applicant.

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."

Applicant has the unqualified support of those who know and have worked with him. (AppXs D, E, I and J.) I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Foreign Influence, Foreign Preference and Personal Conduct.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge