



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



In the matter of:)	
)	
)	ISCR Case No. 12-09686
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2013

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. Applicant is a naturalized citizen of the United States originally from Afghanistan. The security concerns raised by Applicant’s relationships with her sister’s ex-husband, her husband’s brother, and two former co-workers who are citizens and residents of Afghanistan are mitigated. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,¹ on August 22, 2013, the DOD issued a Statement of Reasons (SOR)

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960; as amended, as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

detailing security concerns under foreign influence guidelines. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted its written case on February 22, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 16, 2013. Applicant timely submitted Applicant's exhibits (AE) A1 through A19, which are admitted without objection. The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 10. The case was assigned to me on April 19, 2013.

Procedural Issues

Motion to Amend SOR

Department Counsel moves to amend the SOR ¶ 1.g to include Applicant's two brothers. The motion is denied. Applicant's older brother is a naturalized U.S citizen who works as a linguist for a federal contractor and holds a security clearance. Her younger brother is a U.S. permanent resident, who lives with Applicant's mother. Beyond their existence, Department Counsel presented no evidence showing that Applicant's relationship with either brother raises a security concern. Based on the evidence, neither relationship is disqualifying under the foreign influence guideline.²

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan. Applicant did not object to the request, and it was approved. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant, 44, has worked as a linguist for a federal contractor in Afghanistan since February 2012. Applicant was born in Afghanistan, a country located in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia on the north. With a population of 18 million people, Afghanistan is presently an Islamic Republic that has had a turbulent political history. After the Russians withdrew from the country, fighting continued among the various ethnic, clan and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic government took power in 2004

² AE A1-2, A15-16.

after a popular election. Despite that election, terrorists and the Taliban continue to assert power and intimidation within the country. The country's human rights record remains poor. Problems include: extrajudicial killings; widespread official impunity; official corruption; violence and societal discrimination against women. Violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. No section of Afghanistan is safe or immune from violence.³

Applicant became a U.S. naturalized citizen in August 2011. Between 1993 and 2002, Applicant moved back and forth between Afghanistan and Pakistan. Initially, she moved to Pakistan to flee the civil war in Afghanistan after her family home was destroyed in a random attack. She returned to Afghanistan in 1997, believing that the situation in Afghanistan was improving under the stability of the Taliban rule. Applicant and her husband began working for a non-profit organization dedicated to helping homeless women and children. Their support of the organization drew the ire of the Taliban. Applicant's husband was arrested by the Taliban in early 2000 and again in 2001. Before taking her husband away in 2001, the Taliban beat Applicant. After her husband escaped captivity, they fled to Pakistan again. In 2002, Applicant returned to Afghanistan after applying for a position at the U.S. Embassy in Kabul, which she started in August 2002. Applicant discussed her contacts with the Taliban in her February 2012 counter-intelligence interview. When asked about the threats she received from the Taliban, Applicant opined that they were not personal because the Taliban indiscriminately threatened anyone who was not part of the organization.⁴

Applicant worked as an employee at the U.S. Embassy in Kabul until March 2003. As a result of her status as an embassy employee, Applicant received a visa to enter the United States with two of her three children so that she could obtain medical care for her daughter. Applicant decided to stay in the United States permanently. In 2006, Applicant's husband and their oldest child also immigrated to the United States as political-asylum seekers, thus reuniting the family. Applicant's husband and her three older children are also naturalized U.S. citizens. Her youngest child is a U.S. citizen by birth. They all live together in the home Applicant and her husband own together. Applicant's mother, her two brothers, and her three sisters also immigrated to the United States. Applicant's mother and older brother are naturalized U.S. citizens. Her younger brother and her sisters, two of whom are married, are living in the United States with their families as permanent residents. One of her brothers-in-law also works as a linguist for a federal contractor.⁵

Applicant admits that two of her friends,⁶ her sister's ex-husband, and her husband's brother, are citizens and residents of Afghanistan. The friends alleged in ¶¶

³ GE 11.

⁴ GE 4-5, 8.

⁵ GE 2, 4, 8; AE A1-A16.

⁶ The SOR alleges several friends, but from the disclosures Applicant made on her security clearance application and her counter-intelligence questionnaires, there are only two friends identified as being

1.h and 1.i are her former co-workers from the U.S. Embassy in Kabul. She maintains contact with them only through Facebook. She has not had any direct contact with either friend since she immigrated to the United States in 2003. Applicant does not maintain contact with her sister's ex-husband, who works as an engineer, nor has she had any contact with her husband's brother since 2006. Applicant learned from other members of her husband's family that her husband's brother works for the Afghan government. She has no first-hand knowledge of his job details.⁷

The SOR alleges that Applicant's father (¶1.b), parents-in-law (¶¶ 1.d – 1.e), and youngest sister (1.h.) are citizens and residents of Afghanistan. All are deceased. She reported their deaths on her security clearance application and counter-intelligence questionnaires. The Government concedes that these deceased relatives are not a security concern.⁸

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 to be 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, administrative judges apply the guidelines 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.

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,

citizens and residents of Afghanistan. The friend alleged in ¶1.i, is also one of the two friends alleged in ¶ 1.h.

⁷ GE 2; AE A1-2.

⁸ GE 4, 9-10.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

Foreign Influence

Applicant’s relationships with her husband, son, mother, two brothers, three sisters, and two brothers-in-laws are not disqualifying under the foreign influence guideline. These relatives’ status as either naturalized U.S. citizens or permanent residents, living in the United States, predates the SOR. However, the security concerns raised by Applicant’s relationships with her sister’s ex-husband, her husband’s brother, and her two friends that are citizens and residents of Afghanistan require greater scrutiny. “Foreign contacts . . . may be a security concern if the individual has divided loyalties . . . , 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.”⁹

While the mere possession of close ties with foreign family members or friends is not disqualifying as a matter of law, a close relationship with even one person living in a foreign country, is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. A close relationship with a person who is a resident and citizen of a foreign country can be disqualifying if the contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion; or if the relationship could create a potential conflict of interest between the applicant’s obligation to protect sensitive information or technology, and his desire to help a foreign person.¹⁰ Evaluating the nature of a nation’s government, its relationship with the United States, and its human rights record is essential to this calculus. Given the perilous conditions in the country caused by the operation of the

⁹ AG ¶ 6.

¹⁰ AG ¶¶ 7(a) – (b).

Taliban – which Applicant has experienced firsthand, the widespread corruption within the government, the poor human rights record, the risk of terrorism, and Applicant’s brother-in-law’s employment in the Afghan government, a heightened risks exists.

However, Applicant has provided sufficient evidence to mitigate the security concerns raised by these relationships. The status of Applicant’s two friends as employees of the U.S Embassy in Kabul makes it unlikely that these relationships will cause her to choose between the competing interests of the United States and Afghanistan.¹¹ While the same cannot be applied to her husband’s brother’s position, this relationship is mitigated – as is Applicant’s relationship with her sister’s ex-husband -- by the lack of contact between them. Given the paucity of contact, there is little likelihood that either of these relationships serves as a potential source of exploitation for Applicant.¹²

Most important, Applicant has deep ties to the United States. She previously worked as an employee at the U.S. Embassy in Kabul. That job facilitated Applicant’s immigration to the United States, where she was followed by her immediate family. She and her husband own a home in the United States, but own no property in Afghanistan. Her brother and one of her brothers-in-law also work as linguists for a federal contactor. Based on the evidence, I find that Applicant will resolve any conflict of interest in favor of the United States. Also any concerns raised by Applicant’s previous interaction with the Taliban are mitigated by the passage of time, the cessation of the conduct that drew the Taliban’s attention and the fact the family members, whose well-being would most likely serve as a potential source of vulnerability, are living in the United States.¹³

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant does not have divided loyalties between the United States and Afghanistan. I conclude that Applicant has mitigated the foreign influence 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: FOR APPLICANT

Subparagraphs 1.a-1.j: For Applicant

¹¹ AG ¶ 8(a).

¹² AG ¶ 8(c).

¹³ AG ¶ 8(b).

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge