



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 12-09694
)
)
Applicant for Security Clearance)

Appearances

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

April 10, 2013

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 8, 2012. (Government Exhibit 10.) 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.

Applicant responded to the SOR in writing on September 18, 2012, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on January 29, 2013. Applicant received the FORM on February 10, 2013. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a response to the FORM dated February 16, 2013 with attachments. This case was assigned to the undersigned on March 11, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Afghanistan. (FORM, page 3.) Applicant had no objection. (Applicant's Response to FORM.) 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

Applicant is 25 years old and married with three children. He is employed by a defense contractor as a Linguist, and is applying for a security clearance in connection with his employment.

The Government opposes Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence, which could result in the compromise of classified information.

Applicant admitted each of the allegations set forth under this guideline. (Government Exhibit 3.) Applicant was born in Afghanistan in 1987, and grew up there. He graduated from high school, and from November 2002 to November 2003, he joined the English literature faculty department at an Afghan University paid for by the Afghan Government. From 2003 to 2007, he worked in Afghanistan with the U.S. forces. In September 2007, he quit his job to come to the United States, after his special immigrant visa was granted. Since 2007, he has been on countless missions with his teams to serve and support the United States, its armed forces and the people of America.

In October 2011, Applicant became a naturalized United States citizen. Applicant contends that his immediate family that includes his wife, children, parents, in-laws and his wife's siblings are all attempting to emigrate to the United States from Afghanistan. He claims that they have begun the immigration process and are awaiting their visas. Applicant has provided a copy of his letter from the United States National Visa Center which has scheduled the visa interview for his parents and siblings on March 3, 2013. (Applicant's Response to FORM.)

Applicant is married to an Afghan woman and they have three children. His wife does not speak English. It is not clear from the record if Applicant lives with his wife in Afghanistan, though as of 2010 he had contact with her and their children every day. His wife and children are citizens and residents of Afghanistan. Applicant's parents, two sisters, four of his five brothers, and his wife's parents are also all citizens and residents of Afghanistan. One brother has immigrated to the United States, but remains an Afghan citizen.

The record indicates that Applicant's wife takes care of the children. His father is unemployed and his mother is a homemaker. Applicant has five brothers and two sisters. One brother is a manager of an NGO. His other brothers are students, including the one who lives in the United States. His wife's parents are also jobless. One sister is a teacher and his other sister is a student. (Government Exhibit 9.)

Applicant maintains daily contact with his wife and children. He indicated that he has twice weekly contact with his parents. He has weekly contact with his two sisters. He contacts his brothers about once a month or more. He contacts his wife's parents about once every three months. (Government Exhibit 9.)

Applicant indicates that his family in Afghanistan is a typical Afghan family. They are well educated, fluent in English, except his wife, and have always wanted to come to the United States. They have wanted Applicant to sponsor them to come to the United States. Applicant states that he has two bank accounts in the United States and does not have any assets in Afghanistan. He indicates that he does not know anyone in Afghanistan besides his family. He states that he does not know many people in the United States either.

Letters of recommendation from a number of professional associates who have worked closely with Applicant in Afghanistan indicate that he has been excellent at his job for the past four years and has served with honor. He is intelligent, dependable, has an excellent work ethic, and is always on time and ready to go to work. He is most enthusiastic and hardworking. His knowledge and understanding of languages is impressive. His ability to listen, comprehend and translate between the English, Dari and Pashto languages is superb. He is highly recommended for a security clearance. (Government Exhibit 7 and Applicant's Response to the FORM.)

Applicant received several Certificates of Appreciation for his technical expertise and invaluable contribution to our armed forces to increase security, stability and economic development. (Applicant's Response to FORM.)

I have taken official notice of the following facts concerning Afghanistan. Afghanistan is an Islamic republic. It has been an independent nation since August 19, 1919, after the British relinquished control. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujahedin, opposed the communist regime. The resistance movement eventually led to the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union. In the mid-1990s the Taliban rose to power largely due to the anarchy and the divisions of the country among warlords that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of the Koran on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin-Laden, to al-Qa'ida generally, and to other terrorist organizations. After the September 11, 2001 terrorist attacks, U.S. demands that Afghanistan expel Bin-laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001.

Although there has been some progress 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, economic, and political infrastructure. Human rights problems included extrajudicial killings, torture and other abuse, poor prison conditions, widespread official impunity, ineffective government investigations of local security forces, arbitrary arrest and detention, judicial corruption, violation of privacy rights, restrictions of freedom of religion, limits on freedom of movement, violence and societal discrimination against women, sexual abuse of children, abuses against minorities, trafficking in persons, abuse of worker rights, and child labor. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical, and travel to all areas of Afghanistan remains unsafe, due to military combat operations, land mines, banditry, armed rivalry between political and tribal groups, and the possibility of terrorist attacks.

POLICIES

Enclosure 2 and Section E.2.2. of the Directive set forth adjudication policies divided into "Disqualifying Conditions" and "Mitigating Conditions." The following Disqualifying Conditions and Mitigating Conditions are found to be applicable in this case:

Guideline B (Foreign Influence)

6. *The Concern.* 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.

Conditions that could raise a security concern:

7. (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;

7. (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.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the administrative judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation, or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." The administrative judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSION

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an applicant for clearance may be involved in foreign influence that could result in pressure, coercion, or conflicts of interest.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

This heightened-risk security concern due to Applicant's extensive family connections in Afghanistan is established. Because of the scope and nature of Applicant's family connections in a country with a high level of terrorism and anti-U.S. activity, I conclude there is a nexus or connection with his security clearance eligibility. It is noted that there is no evidence of bad conduct on Applicant's part, however considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation, or mitigation that is sufficient to overcome the Government's case under Guideline B of the SOR.

Under Foreign Influence, Guideline B, Disqualifying Condition 7.(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 7.(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* apply. None of the Mitigating Conditions are applicable.

The evidence shows that Applicant has strong family relationships in Afghanistan and very few ties in the United States. All of his family members, except one who resides in the United States, are citizens and residents of Afghanistan. All of his immediate family remains in Afghanistan including, most importantly, his wife and young children, as well as his parents and most of his siblings. This case is not about Applicant's loyalty to the United States. It is merely an acknowledgment that a person may act in unpredictable ways when faced with choices that could be important to a loved one.

Multiple foreign family members who maintain close communication with Applicant, and who may be influenced by the Afghan Government or groups that are

actively hostile to coalition forces serving there, is of utmost concern here. Therefore, the emotional bond that Applicant has with his foreign family members are foreign contacts that pose a security risk. Under the heightened scrutiny analysis, Applicant's family members in Afghanistan pose a significant security risk. Furthermore, Applicant's assets and personal connections in the United States are quite limited. He indicates that he has no real property in the United States. He has two bank accounts in the United States but nothing else. Accordingly, I find against Applicant under this guideline.

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. In doing so, I have also considered his favorable evidence, including his awards and favorable letters of recommendation. Under the particular facts of this case, the totality of the circumstances set forth under all of the guidelines, viewed as a whole, support a whole-person assessment that Applicant presents an unacceptable risk to the national security of the United States. In addition, he could easily be subject to coercion and undue influence that could preclude him from properly safeguarding classified information. The evidence presented does not mitigate the negative effects that foreign influence can have on his ability to safeguard classified information.

On balance, it is concluded that Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

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| Paragraph 1: | Against Applicant. |
| Subpara. 1.a.: | Against Applicant. |
| Subpara. 1.b.: | Against Applicant. |
| Subpara. 1.c.: | Against Applicant. |
| Subpara. 1.d.: | Against Applicant. |
| Subpara. 1.e.: | Against Applicant. |
| Subpara. 1.f.: | Against Applicant. |
| Subpara. 1.g.: | Against Applicant. |
| Subpara. 1.h.: | Against Applicant. |

CONCLUSION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Eligibility for access to classified information is denied.

Darlene Lokey-Anderson
Administrative Judge