



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



In the matter of:)	
)	
)	ISCR Case No. 12-09698
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

December 18, 2014

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on November 17, 2009. On March 31, 2014, 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 acknowledged receipt of the SOR on May 27, 2014. He answered the SOR in writing on May 28, 2014, and requested a hearing before an Administrative Judge. I received the case assignment on October 2, 2014. DOHA issued a notice of hearing that same day, and I convened the hearing as scheduled on October 28, 2014. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on

November 6, 2014. I granted Applicant's request to keep the record open until November 28, 2014, to submit additional matters. On November 10, 2014, he submitted Exhibit B, which was received without objection. The record closed on November 28, 2014. 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 all the Subparagraphs of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Guideline B - Foreign Influence

Applicant was born in Afghanistan in 1963. (TR at page 27 lines 7~12.) His father, a former Afghan Army officer, eventually brought most of Applicant's immediate family, to include the Applicant, to the United States in 1995. (TR at page 27 line 13 to page 28 line 22, and AppX A at page 6.) However, five of Applicant's ten siblings remain in Afghanistan. (*Id.*) Applicant became a U.S. citizen in 2002. (TR at page 24 lines 10~13, and GX 2 at page 8.) His net worth in the United States is about \$700,000, with no financial connections to Afghanistan. (TR at page 38 lines 1~12.) Applicant currently serves as an interpreter for the U.S. military in Afghanistan. (AppX A at pages 9~14.)

1.a. Applicant has two brothers who are citizens of and residents of Afghanistan. (AppX A at page 6.) They are not associated with the Afghan government in any way. (TR at page 26 lines 4~6.) The oldest "is a taxi driver." (TR at page 38 line 21 to page 39 line 11.) "Three or four years ago," Applicant helped him financially "with \$200/\$300 every couple on months," and in March of 2014 Applicant filed a formal petition for him to immigrate to the United States. (TR at page 40 lines 3~16.) This is evidenced by that petition. (AppX A at page 5.)

Applicant's younger brother is "a painter." (TR at page 41 lines 2~12.) He has provided this brother very little financial support; but in 2013, Applicant filed a formal petition for him to immigrate to the United States. (TR at page 42 line 16 to page 43 line 17.) This is also evidenced by that petition. (AppX A at page 4.) Applicant has

infrequent contact with both brothers, and then only by phone. (TR at page 42 lines 4~15.)

1.b. Applicant has three sisters who are citizens of and residents of Afghanistan. (AppX A at page 6.) Two of them are housewives; and as such, are not associated with the Afghan government in any way. (TR at page 26 lines 6~9.) The youngest of the three is a teacher; and as such, works for some level of government. Applicant is not sure at which level. (TR at page 47 line 9 to page 48 at line 14.) He speaks to this sister every 3~5 months. (TR at page 48 line 22 to page 49 line 1.) Applicant does not provide any financial support for his youngest sister, but has either filed, or is in the process of filing, petitions for all of his sisters to immigrate to the United States. (TR at page 51 line 23 to page 52 line 18.) This is also evidenced by two formal petitions, one filed in 2012 and the other in March of 2014. (AppX A at pages 2 and 3.) He is awaiting photographs from one of the housewives, before he can file a petition on her behalf.

I also take administrative notice of the following facts. The conclusion of virtually every Administration and outside assessment has been that Afghan central governmental capacity and effectiveness has increased, but that local governance remains weak and all levels of government are plagued by governmental corruption. The convergence of insurgent, terrorist, and criminal networks is pervasive and constitutes a threat to Afghanistan's stability. Security in Afghanistan is challenged by several armed groups, loosely allied with each other. The core insurgent faction in Afghanistan remains the Taliban movement. In 2013, insurgents conducted a significant number of large vehicle-borne improvised explosive device attacks, targeting Coalition Forces bases, military convoys, and Afghan government buildings, mostly in southern and eastern Afghanistan, including Kabul. In 2013, the most significant human rights problems were torture and abuse of detainees; increased targeted violence and endemic societal discrimination against women and girls; widespread violence, including armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; and pervasive official corruption. Corruption was endemic throughout society, and flows of money from the military, international donors and the drug trade continued to exacerbate the problem. A U.S. State Department Travel Warning for Afghanistan remains in effect. The Department of State warns U.S. citizens against travel to 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, Paragraph 7(a) is arguably 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 five siblings who are citizens and residents of Afghanistan. This are clearly countered, however, by the first mitigating condition 8(a), as “*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.*” Applicant has lived in the United States for nearly 20 years, is a U.S. citizen, has \$700,000 of net worth in the United States, and serves the U.S. military in Afghanistan. He has some contact with his five Afghan siblings, who he hopes to soon bring to the United States. I find he cannot be coerced by the government of Afghanistan, or other parties, vis-a-vis his Afghan siblings.

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.

The record shows that the Applicant understands his responsibility to the United States, and serves this country honorably and well in Afghanistan. (AppX A at pages 12~14.) He is highly touted by Army and Marine Corps superiors with whom he serves. (AppX A at pages 9~11.)

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.

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

Conclusion

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

Richard A. Cefola
Administrative Judge