



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



In the matter of:)
)
-----) ISCR Case No. 12-09696
)
Applicant for Security Clearance)

Appearances

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

04/10/2013

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. The evidence shows he has mitigated the foreign influence security concern based on his strong family and employment ties to the United States, which outweigh and overcome his ties to Afghanistan. Accordingly, this case is decided for Applicant.

Statement of the Case

On October 3, 2012, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly

consistent with the national interest to grant Applicant access to classified information.¹ The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline B for foreign influence based on his ties to Afghanistan.

Applicant timely answered the SOR. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about January 31, 2013, Department Counsel submitted all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant, who received it February 24, 2013. He replied to the FORM with the 30-day period allowed under the Directive, and his reply is admitted without objections as Exhibits A and B. The case was assigned to me March 26, 2013.

Findings of Fact

Applicant is a 32-year-old employee of a company engaged in defense contracting. He works as a linguist in support of the U.S. armed forces in Afghanistan, his country of birth. He has had this job since December 2011, and he is currently working in Afghanistan. He is seeking to obtain a security clearance for the first time.

Applicant lived with his immediate family in Afghanistan until 1992, when his family moved to Pakistan. His family left Afghanistan due to safety and security concerns in light of the dominance of the mujahedin.⁴ Over the next several years, Applicant's family was allowed to immigrate to the United States.⁵ Applicant immigrated to the United States in 2001, and he has since resided here. He became a naturalized U.S. citizen in February 2010.

Applicant's employment history in the United States is not unusual. Initially, he was unemployed during 2001–2002 because he lacked permission to engage in lawful

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense 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 here. 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.

² Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as evidentiary exhibits in this decision.

⁴ Exhibit 4.

⁵ Exhibit 4.

employment. In 2003, he began employment with a fast-food restaurant. He worked in that industry for the next several years, ending in about October 2011. He also worked in sales for a major department store during 2009–2011. He left that job for his current job as a linguist at the end of 2011.

To that end, Applicant completed a security clearance application in December 2011 and January 2012.⁶ He also underwent counterintelligence-focused security screening.⁷ As part of his background investigation, he was interviewed at length in January 2012.⁸ He was interviewed again in February 2012, the result of which is a signed and sworn statement.⁹

Applicant has never married and has no children. His immediate family no longer live in Afghanistan or Pakistan, and their status is summarized in the following table.

<i>Relationship</i>	<i>Country of Birth</i>	<i>Citizenship</i>	<i>Residence</i>
Father	Afghanistan	United States	United States
Mother	Afghanistan	United States	United States
Brother	Afghanistan	United States	United States
Brother	Afghanistan	United States	United States
Brother	Afghanistan	United States	United States
Sister	Afghanistan	United States	United States
Sister	Afghanistan	United States	United States

In addition, Applicant has three sisters-in-law and two brothers-in-law, all of whom were born in Afghanistan and now reside in the United States; three of the in-laws are legal resident aliens while the others are U.S. citizens. All three of his brothers, as well as a brother-in-law, are working or have worked as linguists in support of the U.S. armed forces.¹⁰

Applicant has a few extended family members in Afghanistan. His aunt, on his mother's side, is about 40 years old and lives with her son, Applicant's cousin, who is about 25 years old. Both were born in Afghanistan and live there now. His aunt is a

⁶ Exhibit 6.

⁷ Exhibits 4 and 5.

⁸ Exhibit 8.

⁹ Exhibit 7.

¹⁰ Exhibits 5 and 7.

housewife and is not employed outside the home. His cousin is a student studying business at a college in Afghanistan. Applicant also has a cousin who was born in Afghanistan, but now lives in a European country.

Applicant has traveled to Afghanistan to visit his extended family. The first trip was during 2009 to attend the wedding of one of his brothers. He, along with other family members, stayed at his aunt's house during this trip. The second trip was during 2010 to attend the wedding of a cousin who was born in Afghanistan but now lives in a European country. He, along with other family members, stayed at his aunt's house during the trip. Also during the 2010 trip, Applicant met with a young woman two to three times during his stay. Previously, he had communicated with her online. His intention was to become engaged to be married; he did not become engaged; and he has had no contact with the young woman since the 2010 trip.

Applicant's third trip was during 2011 to visit his aunt and cousin. He spent his time hanging out at his aunt's house and looking around the local area. After about a month, Applicant's mother arrived, which led Applicant to extend his stay longer than he had planned. As a result, he was in Afghanistan from June 2011 to October 2011.

In his answer to the SOR, Applicant stated that a sister-in-law who is a citizen of Afghanistan immigrated to the United States in May 2012, and she is now a U.S. resident alien. He also stated that his aunt and her children are citizens of and residents in Afghanistan, and that a friend is also a citizen of and a resident in Afghanistan. He is no longer in contact with this friend. In his February 2013 reply to the FORM,¹¹ Applicant stated that he is currently in Afghanistan working as a linguist for the U.S. military. Concerning his travel to Afghanistan, he stated that his mother has only one sibling there, his aunt, and he wanted to visit her. He stated that he extended his trip when his mother arrived so his mother did not have to stay there by herself. He stated that he knows his aunt's husband, but he rarely saw him because he has a job working in a bank in another area of the country.

In response to Department Counsel's written request, which was included in the FORM, I took administrative or official notice of certain facts about Afghanistan, and they are summarized as follows. After the 1979 invasion and subsequent withdrawal of the then Soviet Union, Afghanistan experienced a civil war among several factions, including the Taliban. By the end 1998, the Taliban controlled most of Afghanistan and provided sanctuary to Osama bin Laden, al Qaeda, and other terrorist groups. U.S. military forces, along with forces from a coalition partnership, forced the Taliban from power by November 2001. With U.S. assistance and support, a new democratic government took office in 2004, which continues to this day. In spite of efforts by the United States and the Afghan government, Afghanistan continues to be a violent, unsafe, and unstable country, which is subject to terrorist attacks and suicide bombings. Afghanistan's human-rights record is generally poor, due to the continuing insurgency, the weak government, and ongoing recovery efforts from years of war.

¹¹ Exhibits A and B.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹² As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹³ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁰ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²¹

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense

¹² *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹³ 484 U.S. at 531.

¹⁴ Directive, ¶ 3.2.

¹⁵ Directive, ¶ 3.2.

¹⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁷ Directive, Enclosure 3, ¶ E3.1.14.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ *Egan*, 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

The gravamen of the SOR is whether Applicant's ties to Afghanistan, his country of birth, disqualify him from eligibility for a security clearance. Under Guideline B for foreign influence,²³ the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

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.²⁴

The guideline contains several disqualifying conditions. Given the evidence of Applicant's family to Afghanistan, I have especially considered the following disqualifying conditions:

AG ¶ 7(a) contact with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 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 classified information or technology and the

²² Executive Order 10865, § 7.

²³ AG ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁴ AG ¶ 6.

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

The guideline also contains several mitigating conditions. Given the evidence here, I have especially considered the following mitigating conditions:

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions 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 United States; and

AG ¶ 8(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 so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant, age 32, is presumed to be a mature adult, and he is now working as a linguist in support of the U.S. armed forces in Afghanistan, a place known as a high-risk environment for our soldiers and the contractors who support them. He has not resided in Afghanistan since he was a young child, leaving there with his family in 1992 and eventually immigrating to the United States. He has lived in the United States since 2001 and worked here since 2003, which are substantial periods of time for a 32-year-old man. He and his immediate family (and his in-laws) reside in the United States and most are U.S. citizens. The United States has been conducting military operations in Afghanistan since 2001, and Applicant is now performing important service in support of the U.S. mission. Taken together, his family and employment ties to the United States are much stronger than his ties to Afghanistan, and these facts and circumstances weigh in his favor.

The security clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern, and that is the situation here. Like most first-generation immigrants, Applicant has some ties to his country of birth. This should not be dismissed or overlooked as fanciful or unrealistic, because the circumstances in Afghanistan are dangerous and unstable and create a heightened risk of foreign influence. With that said, his ties to people in Afghanistan are normal and not extensive, and he has provided reasonable explanations for his travel to Afghanistan in 2009, 2010, and 2011. Any security risk or concern presented by his ties to Afghanistan is outweighed and overcome by his much stronger family and employment ties to the United States.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating the evidence in light of the whole-person concept,²⁵ I conclude Applicant has mitigated the foreign influence security concern. Accordingly, I conclude he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information. This case is decided for Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a–1.e:	For Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge

²⁵ AG ¶ 2(a)(1)–(9).