



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



In the matter of:)	
)	
)	ISCR Case No. 12-10620
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

05/29/2013

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant is a naturalized U.S citizen originally from Afghanistan. His relationships with relatives who are citizens and residents of Afghanistan are not a source of influence, vulnerability, or exploitation. Clearance is granted.

Statement of the Case

On November 16, 2012, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or

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.

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 timely answered the SOR and requested a hearing. At the hearing convened on February 21, 2013, I admitted Government's Exhibits (GE) 1 through 4, without objection. Applicant did not submit any documents. I received the transcript (Tr.) on March 4, 2013.

Procedural Issues

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan and Pakistan. Applicant did not object to the request, and it was granted. The written summaries along with their attachments are appended to the record as Hearing Exhibits (HE) 1 and 2, respectively. The facts administratively noticed are set out in the Findings of Fact, below.²

SOR Amendments

Department Counsel moved to amend SOR ¶¶ 1.a and 1.b to conform to the evidence. Without objection from Applicant, I amended the SOR as follows:³

1.a. Your father-in-law and mother-in-law are citizens and residents of Afghanistan.

1.b. Two of your brothers-in-law are citizens and residents of Afghanistan. Your two sisters-in-law are citizens of Afghanistan, residing in the United States.

Findings of Fact

Applicant, 41, works as a linguist and cultural advisor for a federal contactor. Although he does not currently have a security clearance, Applicant held an interim clearance during his first deployment to Afghanistan in 2009.⁴

Born in Afghanistan, Applicant immigrated to the United States as a refugee with his family when he was 14 years old. He became a naturalized U.S. citizen in June 1993. Applicant's parents and siblings are also naturalized citizens. In 2001, Applicant's parents arranged his marriage to the daughter of distant relatives living in Pakistan. In 2002, Applicant traveled to Pakistan twice with his parents, once to meet his future bride and again to escort her to the United States. Applicant's wife became a naturalized U.S.

² Tr. 12- 13.

³ Tr. 13-16, 75.

⁴ Tr. 70-71.

citizen in 2005 or 2006. Together, Applicant and his wife have four sons, all U.S. citizens by birth, between the ages of six weeks old and ten years old.⁵

Although Applicant's immediate family members are citizens and residents of the United States, he has several family members who are citizens of Afghanistan. Of particular concern are Applicant's two maternal uncles, his parents-in-law, two of his brothers-in-law, and his two sisters-in-law. Before deploying to Afghanistan in 2009, Applicant spoke to his uncles on holidays, but he has not seen them since he left Afghanistan as a teenager. When Applicant met his in-laws they were living in Pakistan, having moved there in 1993 amid concerns over safety and the growing power of the Taliban. They returned to Afghanistan in 2008. Applicant's parents-in-law do not work outside the home. Before moving to Pakistan, Applicant's father worked as a high school educator; his mother-in-law has always been a house wife. The two brothers-in-law alleged in the SOR work for federal contractors as local national linguists. Applicant does not contact his uncles, parents-in-law, or brothers-in-law while he is working in Afghanistan. Although his sisters-in-law are citizens of Afghanistan, both are living in the United States as permanent residents with their husbands.⁶

When at home in the United States, Applicant's only contact with his in-laws living in Afghanistan is through his wife. She communicates with them by telephone and Skype regularly. If he is home, Applicant may offer greetings to his in-laws as they talk to his wife. Applicant's wife and children have traveled overseas to visit her parents and siblings, making one trip to Pakistan to visit Applicant's wife's parents. Most recently, Applicant's wife and children traveled to Afghanistan in 2012, to escort her sister to the United States to be married.⁷

Applicant has worked as a federal contractor supporting U.S. operations in Afghanistan since 2006. He has worked in a variety of positions from role player to cultural advisor. In each capacity he has distinguished himself. The military personnel Applicant works alongside hold him in high esteem. He has received numerous awards and letters of commendation for his service.⁸

Afghanistan

Afghanistan is located in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia on the north. It is a rugged and mountainous country, which has been fought over by powerful nations for centuries. It has about 18 million people. Afghanistan is presently an Islamic Republic that has had a turbulent political history, including an invasion by the Russians in 1979. After an Accord was reached in 1989 and Russia withdrew from the country, fighting continued among

⁵ Tr. 30-33, 41-44; GE 1-4.

⁶ Tr. 39-41, 47-55, 68-69; GE 2-3.

⁷ Tr. 60-61.

⁸ Tr. 58-60, 62-67; Answer.

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 after a popular election. Despite that election, terrorists and the Taliban continue to assert power and intimidation within the country. In May 2012, the United States and Afghanistan signed the *Enduring Strategic Partnership Agreement between the Islamic Republic of Afghanistan and the United States of America*, memorializing a ten-year commitment from the United States to strengthen Afghanistan's sovereignty, stability, prosperity, and continue cooperation to defeat al-Qaida and its affiliates.⁹

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. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence.¹⁰

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

⁹ HE 1.

¹⁰ HE 1.

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, 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

“[F]oreign 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.”¹¹ Applicant’s two uncles, parents-in-law, two of his brothers-in-law, and his two sisters-in-laws and are citizens Afghanistan. Because his sisters-in-law have immigrated to the United States and are now permanent residents, these relationships are no longer a security concern. However, Applicant relationships with his uncles, parents-in-law, and brothers-in-law remain an issue.

The mere possession of close ties with family members living in Afghanistan is not, as a matter of law, disqualifying under the foreign influence guideline. 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;¹² 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.¹³ In evaluating whether a heightened risk exists, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant. Perilous conditions in the country caused by

¹¹ AG ¶ 6.

¹² AG ¶ 7(a).

¹³ AG ¶ 7(b).

the operation of the Taliban, wide-spread corruption within the government, and a poor human rights record create that heightened risk.

But, Applicant has presented sufficient evidence to mitigate the security concerns raised by these contacts. There is no evidence that Applicant's family members are associated with or dependent upon the Afghan government. Also, his brothers-in-law, both local national linguists, work for U.S. companies in support of the U.S. mission in Afghanistan. As such, it is unlikely that Applicant will be put in the position of having to choose between the interests of his relatives in and the interests of the United States.¹⁴ While none of Applicant's familial relationships can be considered casual, they are infrequent and are not likely sources of influence or coercion.¹⁵ Furthermore, Applicant has lived in the United States since he was 14 years old. His parents, siblings, wife, and children are all U.S. citizens. In the 23 years before his 2009 deployment to Afghanistan as a federal contractor, he had not returned to his native country. Applicant's life is firmly rooted in the United States, not Afghanistan. Viewed in totality, these factors lead me to the conclusion that Applicant can be expected to resolve any conflict of interest in favor of the United States.¹⁶

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 has spent the majority of his life in the United States. He does not have divided loyalties between the United States and Afghanistan. Furthermore, his strong work record supporting U.S. operations in Afghanistan supports a favorable finding in this case. Based on the evidence, 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.c:	For Applicant

¹⁴ AG ¶ 8(a).

¹⁵ AG ¶ 8(c).

¹⁶ AG ¶ 8(b).

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.

Nichole L. Noel
Administrative Judge