



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



In the matter of:)	
)	
)	ISCR Case No. 12-12299
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: Dee Ann Goulet, Personal Representative

01/09/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by her relatives who are citizens and residents of Afghanistan. Clearance is granted.

Statement of the Case

On March 15, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on April 16, 2013, admitting all of the allegations. She initially requested a hearing, then changed her mind and requested a decision

without a hearing. On September 30, 2013, Department Counsel submitted a File of Relevant Material (FORM). Applicant received the FORM on September 24, 2013, and filed a timely response. Department Counsel did not object to the response. On November 15, 2013, I received the case assignment.

At Department Counsel's request, I took administrative notice of the facts encapsulated in nine documents (Items I through IX) regarding the security profile of Afghanistan vis a vis the United States, and Afghanistan's human rights record. These documents are included in the FORM.

Findings of Fact

Applicant is a 43-year-old divorced woman with three children, ages 17, 19, and 21. She was born and raised in Afghanistan. She graduated from high school in Afghanistan. Since immigrating to the United States in 2002, she has taken some courses at a local community college. (Item 14 at 10) Since April 2012, Applicant has been working as a counterintelligence linguist for a defense contractor. She has spent the majority of this time deployed to Afghanistan in support of Operation Enduring Freedom. (Response at 7)

Applicant's job duties include helping Coalition forces "vet local Afghans wishing to gain access to Coalition soldiers" (Item 9 at 1) According to Applicant's supervisor, she "is in the top one percent of her field." (Response at 9) The chief of the base security group where Applicant works is similarly impressed with her job performance. In a reference letter dated September 1, 2013, he noted that Applicant "has done an outstanding job providing support to all of the different force protection and counterintelligence agencies," where she works. (Response at 4) According to a counterintelligence screener, Applicant "has perfected a very difficult skill of interpreting a sentence into the target language while simultaneously comprehending the next sentence." (Response at 8) This enables screeners to focus solely on the subject being questioned and on the screening methodology.

As part of Applicant's job, she has sometimes been forced into "dangerous and often difficult situations." (Response at 4) Despite these challenges, she has always "[risen] to the occasion." (Response at 4)

Applicant is also well-respected in her community. A family friend characterizes her as "a woman of principle and great courage." For example, when she discovered that an Afghan man in the local immigrant community was sexually harassing young Afghan girls, including her daughter, she encouraged her daughter to share these allegations with local law enforcement despite pressure from the patriarchal Afghan community for her to forego police involvement. (Response at 10) Ultimately, the man was successfully prosecuted. Since then, Applicant has distanced herself from the local Afghan community.

Applicant became a naturalized U.S. citizen in February 2008. (Item 14 at 6) Applicant left Afghanistan in 1993. Before moving to the United States, she lived in Pakistan for nine years. She immigrated to the United States as part of a program that assists refugees. (Item 14 at 6) According to a volunteer who worked with a public charity that helped refugees integrate into the community, Applicant “was an appreciative recipient of social welfare,” who worked hard at obtaining independence from government assistance by progressively working at higher-paying jobs. (Response at 14) Also, Applicant’s “thirst for knowledge and the American experience was remarkable,” as she eagerly availed herself of cultural opportunities and social events to learn about the United States. (Response at 14)

In 1993, Applicant’s husband, a native of Afghanistan, left her and moved to Germany. Consequently, although Applicant and her husband were legally married for 23 years, they lived together for only six months out of the last 20 years of their marriage. In an effort to salvage her marriage, Applicant moved with her children to Germany to live with her husband, but returned to the United States after he reiterated that he did not want to remain married. They became legally divorced in 2013. (Response at 1)

Applicant’s mother is a citizen and resident of Afghanistan. She is a homemaker. Applicant talks to her once or twice per month. (Item 13). Applicant’s father is deceased.

Applicant’s stepmother is a citizen and resident of Afghanistan. She is a homemaker. Applicant talks with her four to six times per year. (Item 3 at 3)

Applicant has three brothers who are citizens and residents of Afghanistan. B1 is computer engineer. Applicant talks with him once or twice per month, and exchanges e-mails with him two or three times per month. (Item 14 at 7; Item 3 at 3) B2 is an electrician. (Item 3 at 3; Item 14 at 7) Applicant talks with him once a month by phone. (Item 3 at 3) B3 owns a computer business. Applicant talks with him once a year. (Item 14 at 8)

Applicant has an uncle who is a citizen and resident of Afghanistan. He is a shopkeeper. Applicant talks with him twice each year. She has not seen him in 15 years. (Item 3)

Applicant has two cousins who are citizens and residents of Afghanistan. C1 is a homemaker. (Item 3 at 4) Applicant talks with C1 two to four times per year. C2 works for the Coalition forces. Applicant does not know his exact job. (Item 3) Applicant talks with C2 once or twice per year.

Applicant’s former sister-in-law is a citizen and resident of Afghanistan. She talks to her once or twice per month. (Item 3 at 3) Their relationship was strained by Applicant’s separation from her husband. (Item 14 at 8)

Decades of war, brutality, and theocratic rule rendered Afghanistan a failed state. (Item II at 1) As such, it became a safe haven for Al-Qa'eda, who planned the 9/11 attacks from operational bases in Afghanistan. U.S. forces ousted the terrorist-enabling government and largely routed the Afghan terrorist network. With the help of the United States and its allies, Afghanistan has made significant gains in expanding democracy and developing a stable society. (Item I at 1) Currently, Afghanistan is an Islamic republic with a directly-elected presidency and a bicameral legislative branch. (Item III) However, elements of the ousted government and terrorists continue to wage guerilla warfare against U.S. forces and intimidate civilians, and no part of Afghanistan is immune from targeted or random violence. (Item II at 1; Item VI at 1) The U.S. State Department has warned U.S. citizens against travel to Afghanistan. (Item VI at 1) Moreover, women and girls are often the particular target of violence throughout Afghanistan. (Item III)

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, "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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest" (AG

¶ 6). Moreover, “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” (*Id.*).

Applicant’s relatives living in Afghanistan generate a security concern under AG ¶ 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 county if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Applicant talks to B3, her cousins and her uncle less than five times per year. AG ¶ 8(c), “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation,” applies to these relatives. Applicant has mitigated the security concern with respect to these relatives.

Applicant has been living in the United States for 11 years. Since then, she has thoroughly integrated herself into the community, establishing close friends, and taking courses at a community college. She has immersed herself in U.S. culture by becoming involved with social groups that visit places such as museums and libraries. Most important, Applicant is a courageous woman who is doing an excellent job working as a translator in sometimes dangerous conditions, and who was not afraid to defy the local Afghan immigrant community when she reported to the police the sexual harassment of her daughter and some other Afghan girls by an Afghan immigrant. Under these circumstances, “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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.”¹ I conclude Applicant has mitigated the security concern related to the remaining relatives listed in the SOR.

Whole-Person Concept

Under the whole-person concept, the administrative judge should 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.

¹AG ¶ 8(b).

I considered the whole-person concept in my foreign influence analysis when I concluded that Applicant's character, as demonstrated by her exceptional contribution as a translator in Afghanistan, and her ties to the United States, outweighs any vulnerability to coercion generated by relatives living in Afghanistan. Applicant has mitigated the foreign influence security concern.

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.f:	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.

MARC E. CURRY
Administrative Judge