



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



In the matter of:)
)
) ISCR Case No. 13-00252
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

01/29/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On June 4, 2013, the Defense of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B. This 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) implemented on September 1, 2006.

On July 6, 2013, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.¹ On September 28, 2013, Department Counsel compiled a File of Relevant Material (FORM). The FORM contained documents identified as Items 1 through 10. The FORM also included a request that I take administrative notice of certain facts about Afghanistan and provided official U.S. documents as reference materials.

On October 1, 2013, the Defense Office of Hearings and Appeals (DOHA) forwarded to Applicant a copy of the FORM with instructions to submit any additional information and objections within 30 days of its receipt. Applicant submitted a timely response that has been marked as Item 11. The case was assigned to me on November 25, 2013.

On December 19, 2013, Department Counsel requested to reopen the record to submit an additional document. The additional document, which has been marked as Item 12, was forwarded to Applicant for comment or objection. On January 18, 2014, Applicant submitted additional comments and a performance evaluation that have been marked as Items 13 and 14.

Neither Department Counsel nor Applicant submitted any objections to the proffered documents. Items 1 through 14 are admitted into the record, and the Department Counsel's request for administrative notice is granted. The facts administratively noticed are set out below in the findings of fact.

Findings of Fact

SOR and Applicant's Answer

The SOR contains eight allegations. The allegations assert that Applicant has a grandmother, aunt, and two uncles who were citizens and residents of Afghanistan (SOR ¶¶ 1.a, 1.c, and 1.g); that he sent money to his grandmother (SOR ¶ 1.b) and his aunt (SOR ¶ 1.d) in the past; that he has two brothers who are citizens of Afghanistan, but reside in the United States (SOR ¶ 1.e); that his deceased father was a senior officer in the Afghan National Army and was killed by Mujahideen fighters in the early 1990s (SOR ¶ 1.f); and that his two uncles served in the Afghan military (SOR ¶ 1.h). In his answer to the SOR, Applicant admitted five of the allegations (SOR ¶¶ 1.c and 1.e through 1.h) and denied the other three. His admissions are incorporated herein as findings of fact.²

¹ Item 4.

² Items 1, 4.

Applicant's Background and Foreign Contacts

Applicant is a 34-year-old linguist employed by a defense contractor. He has worked for his current employer since October 2010. He was born in Afghanistan. He and his immediate family fled Afghanistan in January 1996 to escape the Taliban rule. They then lived in Pakistan until coming to the United States as refugees in December 2000. He received a high school diploma in the United States in August 2001 and attended college from January 2003 to May 2012, but has not yet earned a degree. He became a U.S. citizen in April 2006. He has never been married and listed no children in his security clearance applications.³

Applicant's mother, two brothers, and two sisters are citizens and residents of the United States. The SOR alleged that his grandmother was a citizen and resident of Afghanistan, but Applicant submitted evidence showing she became a permanent resident of the United States in May 2011. He has two other brothers who are citizens of Afghanistan and permanent residents of the United States. He indicated that his two brothers are too lazy to apply for U.S. citizenship. He noted that they value their green cards and have not traveled outside the U.S. since their arrival here. One of his brothers who is not a U.S. citizen owns a home in the United States.⁴

Applicant's father is deceased. He served in the Afghan National Army for about 13 years and was a senior officer. He was killed by unknown assassins in the early 1990s.⁵

Applicant's aunt and two uncles are citizens and residents of Afghanistan. He has close ties to his aunt and uncles. He noted that his aunt and uncles do not have government or military jobs. His aunt is disabled, and he has periodically sent her about \$50 for medicine, but not on a regular basis. His uncles work in a local market. His uncles performed two years of mandatory Afghan military service during the Soviet regime. His aunt and uncles have applied to immigrate to the United States.⁶

Applicant traveled to Afghanistan in 2006, 2010, 2011, and 2012. He took most of those trips to assist his grandmother in applying for U.S. permanent resident status and to facilitate her move to the United States. In Afghanistan, his grandmother lived with his aunt and uncles. When he traveled there to help his grandmother, he also had contact with his aunt and uncles. Prior to his grandmother's arrival in the United States, he and his other family members periodically sent \$500 or more to his grandmother for her support.⁷

³ Items 5, 6, 7, 8, 9, 11.

⁴ Items 4, 5, 6, 8, 9, 11.

⁵ Items 4, 8, 10, 11.

⁶ Items 4, 8, 11.

⁷ Items 4, 5, 6, 8, 9, 10, 11.

Applicant owns no property in Afghanistan. In September 2013, he purchased a house in the United States with his sister. He indicated that he is looking forward to getting married and establishing a family in the United States.⁸

Applicant served as a linguist in Afghanistan from March 2010 to February 2011. In 2006, 2010, and 2012, he went through counterintelligence and force protection (CI/FP) screenings. The 2010 screening found that Applicant did not present a CI/FP risk. His 2012 screening indicated that his record checks were incomplete and his records warranted further investigation. The records warranting further investigation were reports that Applicant, while working as an employee of a defense contractor, refused to go on two patrols in Afghanistan. One report indicated that Applicant refused to go on a patrol because he was being forced by a military team to carry a firearm in contravention to his employer's policy and that he tendered his resignation. As a result of that incident, a linguist coordinating officer submitted a letter requesting Applicant be terminated from his job and not be allowed to be rehired. Applicant's resignation was accepted.⁹

In Item 13, Applicant addressed the reports that he refused to go on the two patrols and denied those accusations. He noted the first incident occurred in April 2010 when he was waiting in a transit tent in Afghanistan with other linguists for his military point of contact (POC) to transport him to his assignment. The POC did not come to pick him up but instead sent other military members to get him. The other military members did not know Applicant or his name, and Applicant did not know them. Applicant did not realize until after they left that he was supposed to go with them. He indicated that his failure to connect up with those military members on that occasion was a misunderstanding as opposed to a refusal to go. The second incident occurred in about February 2011 when his POC indicated he was going to be armed with a rifle on a mission. His company had a policy that precluded its employees from possessing firearms. Because he was concerned that he would lose his job by possessing a firearm, he told his POC that he needed to contact his company to clarify this issue before going on the mission. The POC apparently reported Applicant's statements as a refusal to go on the mission. Applicant stated:

I did not refuse the mission because it was too dangerous. I worked with [military teams] for almost 10 months in [a named province] and performed my job as a linguist very well in multiple missions in multiple districts of that province from foot patrols to convoy missions [on a] daily basis. I accepted all dangers and harsh conditions . . . and I had no fear of going on missions and had no physical or mental weaknesses. The only concern was the training and issue of fire arms.¹⁰

⁸ Item 8, 11.

⁹ Items 4, 5, 6, 8, 9, 10, 11, 12.

¹⁰ Item 13.

Of note, the SOR does not contain any allegations concerning Applicant's reported refusal to go on patrols. Additionally, his current employer is the same employer he worked for when he submitted his resignation in February 2011.¹¹

Applicant provided a letter of recommendation dated July 12, 2010, from a veterinarian who served with him in Afghanistan. The veterinarian stated that Applicant "never refused a patrol, regardless of the potential for insurgent attack or improvised explosive devices." He described Applicant as trustworthy and reliable.¹²

Afghanistan¹³

On May 2, 2012, the United States and Afghanistan signed the Enduring Strategic Partnership Agreement. It is a 10-year strategic partnership agreement that demonstrates the United States enduring commitment to strengthen Afghanistan's sovereignty, stability, prosperity and continue cooperation to defeat al-Qaida and its affiliates. The United States has supported the elected Afghan government by providing development aid and assisting in the stabilization of the country. The United States supports the Afghan government's goals of increasing security, combating corruption, improving the government, and providing better services to its people. Despite some progress, Afghanistan still faces daunting challenges in defeating terrorists and insurgents.

No part of Afghanistan is immune from targeted or random attacks against U.S. and other Western nationals. Various groups oppose the establishment of a democratic government and will use violence to achieve their goals. U.S. citizens who are also citizens of Afghanistan may be subject to laws that impose special obligations.

There are serious human rights problems in Afghanistan that include widespread violence from armed insurgent groups against persons affiliated with the government. There are indiscriminate attacks on civilians. There are credible reports of torture and

¹¹ Items 2.

¹² Items 11 and 14.

¹³ The official U.S. Government documents contained in the FORM to provide the factual summary on Afghanistan are: U.S. Department of State, Fact Sheet, *U.S. Relations With Afghanistan*, September 6, 2012 (2 pages); U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Afghanistan*, August 28, 2013 (9 pages); U.S. Department of State, *Country Reports on Human Rights Practices for 2012*, undated (50 pages); Director of National Intelligence, *Statement for the Record on the Worldwide Threat Assessment of the U.S. Intelligence Community for the Senate Select Committee on Intelligence*, March 12, 2013 (34 pages); U.S. Department of State, *Country Reports on Terrorism 2012, Chapter 5 – Terrorist Safe Havens*, May 30, 2013 (2 pages); U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Afghanistan*, August 23, 2013 (3 pages); U.S. Department of State, *Country Reports on Terrorism 2012, Chapter 2 – South and Central Asia*, May 30, 2013 (4 pages); *Statement of Chairman, Joint Chiefs of Staff before the Senate Armed Forces Committee on Afghanistan and Iraq*, September 22, 2011 (8 pages); and U.S. Department of State, *U.S. Declares Haqqani Network a Terrorist Organization*, September 7, 2012 (3 pages).

abuse of detainees by security forces. There is pervasive corruption, endemic violence, and societal discrimination against females.

The Department of State has warned U.S. citizens against traveling to Afghanistan because of the threat of violence. Extremist networks and groups have conducted suicide attacks and assassinations against government leaders. These terrorist groups operate within Afghanistan and also in nearby Pakistan.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG 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 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 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 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 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

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them, and the following disqualifying conditions potentially apply:

- (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
- (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone could be sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant’s aunt and two uncles are citizens and residents of Afghanistan. He maintains contact with them and periodically provided financial support to his aunt. Two of his brothers and his grandmother are also Afghan

citizen, but live in the United States. Applicant's contact with his foreign relatives is sufficient to raise a security concern.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an unstable government or subject to terrorist activity. Insurgency operations are being conducted in Afghanistan against Afghan and U.S. forces. There is also evidence that Afghanistan has a poor human rights record and has active terrorist groups operating within its borders. This places the burden of persuasion on Applicant to demonstrate that his contacts in Afghanistan do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the U.S. and his family members. Of note, Applicant's father was killed by unknown assassins in 1993 and Applicant and his immediate family fled Afghanistan as refugees. The dangerous circumstances that exist in Afghanistan create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. I find both of the above disqualifying conditions apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8. The following mitigating conditions potentially apply:

- (a) the nature of the relationship 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 and interests of the U.S.;
- (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 U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and
- (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.

Applicant's aunt and two uncles are citizens and residents of Afghanistan. In the past, he has sent money to his aunt and has visited her while visiting his grandmother. His contact with his aunt is not casual, infrequent, or minimal. Given his close family contacts in Afghanistan and the security conditions there, Applicant could be placed in a position of having to choose between the interests of foreign family members and the interests of the United States. AG ¶ 8(a) and 8(c) do not apply to his Aunt and Uncles. AG ¶ 8(a) applies to his brothers and grandmother who reside in the United States.

Applicant came to United States in December 2000 and became a U.S. citizen in April 2006. His mother, two brothers, and two sisters are citizens and residents of the United States. Although two of his brothers and grandmother are not U.S. citizens, they are permanent residents of the United States. Applicant is half-owner of a house in the United States and has no property in Afghanistan. He plans on living permanently in the United States. His aunt and uncles have submitted applications to immigrate to the United States. Considering his contacts and interests in the United States in comparison to those in Afghanistan, I find his sense of loyalty or obligation to his aunt and uncles are far outweighed by his deep and longstanding relationships and loyalties in the United States. He can be expected to resolve any conflict of interest in favor of U.S. interests. I find AG ¶ 8(b) applies.

In cases of this nature, an additional analysis is necessary. The Appeal Board has stated:

As a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.¹⁴

While working as a linguist in Afghanistan, Applicant was described as reliable and trustworthy and as "never refus[ing] a patrol, regardless of the potential for insurgent attack or improvised explosive devices." On the other hand, records indicate that Applicant refused to go on two patrols, but his repudiation of the assertions in those records is plausible and reasonable. Although details of his compliance with security procedures on patrols in Afghanistan are unknown, his participation in those patrols under dangerous conditions merits some credit under the quoted Appeal Board exception.

¹⁴ ISCR Cases No. 06-25928 at 4 (App. Bd. Apr. 9, 2008) (internal citations omitted). See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) citing ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May, 30, 2006); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006).

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. 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2 were addressed under that guideline, but some warrant additional comment.

Applicant has lived in the United States for 13 years and has been a U.S. citizen for over seven years. He worked as a linguist in Afghanistan in support of the U.S. military. His close family ties in Afghanistan are outweighed by his interests and relationships in the United States. He can be expected to resolve any potential conflicts in the interests of the United States.

Overall, the record evidence leaves me with no 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 under the foreign influence guideline.

Formal Findings

Formal findings 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.h:	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.

James F. Duffy
Administrative Judge