



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 13-00257
)
Applicant for Security Clearance)

Appearances

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

January 24, 2014

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on November 12, 2012. (Item 5.) On May 2, 2013, the Department of Defense (DoD) 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 on September 1, 2006.

Applicant submitted an Answer to the SOR, including attachments, on July 6, 2013, and requested a decision be made without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to Applicant on September 11, 2013. Applicant received the FORM on October 17, 2013, and was given 30 days to submit any additional information. Applicant did not submit any additional information in a timely fashion. The case was assigned to me on December 17, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Islamic Republic of Afghanistan. Applicant did not object. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 52 and married. He has been employed by a defense contractor since November 2012 as a linguist, and seeks a security clearance in connection with his employment in the defense industry. Applicant admitted the factual allegations in the SOR. The following facts are based on his statements and attachments to the Answer to the SOR, as well DoD interrogatories and counter-intelligence interviews. (Items 4, 6, 8, and 10.)

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness. Applicant was born and raised in Afghanistan. He married his wife in 1992 in Afghanistan. (Item 5.) Applicant entered the United States as a refugee with his family in 2001. (Item 6 at 1, 5.) He became a naturalized citizen in 2008. (Item 5.)

Applicant's wife became a naturalized citizen of the United States in 2007. (Item 9 at Section 15.) He has four children. The youngest was born in the United States and is a native-born American citizen. Two of the other three were born in Afghanistan, another in Pakistan. They are all naturalized citizens of the United States. (Item 6 at 17.)

1.a. Applicant has two brothers and five sisters. All of them are married, and all of them live in Afghanistan with their spouses. It appears that none of them have connections to the Afghan government, but the evidence on this point is slight. (Item 6 at 16.) Applicant states in his Answer to the SOR:

I did not call to my four sisters and brother . . . since 2010, and I used to call to my sister . . . and brother . . . 1 x year (once a year) when I was in US but as long as I am working as a linguist in Afghanistan December 2012 I did not call them, and also when I used to call them it was just [greeting] and talking about the family.

1.b. Applicant's mother-in-law and father-in-law are citizens of Afghanistan. They are currently permanent resident aliens, living in the United States since March 2011. (Applicant's Answer at 3.)

1.c. This allegation states, “Your brother-in-law and sister-in-law are citizens and residents of Afghanistan.” This allegation evidently applies to two of Applicant’s wife’s relatives. He admits that they are Afghan citizens and live there.

1.d. Applicant admitted that he traveled to Afghanistan from about November 2009 to January 2010 to visit his family and friends.

A counter-intelligence screening questionnaire dated March 20, 2012, states, “CANDIDATE [Applicant] is a prior role player and has conducted a CI screening . . . on 03/2010. CANDIDATE also had a subject interview done . . . for a clearance in 05/2008. CANDIDATE had a second subject interview done . . . for a clearance in 04/2010. CANDIDATE was denied a clearance both times due to having family who resided in Iran at the time of the interview.” (Item 6 at 1-2.) There is no further information as to who of Applicant’s family was living in Iran, what they did there, or when they left.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. Applicant did not submit any evidence concerning his life in the United States, including any evidence that would tend to show deep and longstanding relationships and loyalties to the United States. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

I also take administrative notice of the facts concerning the Islamic Republic of Afghanistan, as set forth in the FORM at Section III. Of particular significance are the poor human rights situation; and the active and hostile presence of Al Qaida, the Taliban, and other militant extremist groups that generate instability and openly attack police and military forces of the Afghan government, as well as the local populace and U.S. persons and interests.

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 AG ¶ 2 describing 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. In addition, the administrative judge may also rely on his or her own common sense, as well as his or her knowledge of the law, human nature and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) states, “Any 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's circumstances and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving

that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows under AG ¶ 6:

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.

Applicant has family connections to Afghanistan. The following disqualifying conditions under AG ¶ 7 apply to this case based on the facts:

- (a) contact 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; and
- (b) connections to a foreign person . . . 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 . . . by providing that information.

Applicant has not provided sufficient evidence to show that the following mitigating conditions under AG ¶ 8 apply to this particular case:

- (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 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 interest in favor of the U.S. interest; 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.¹

Applicant and his wife have sixteen siblings and their spouses currently living in Afghanistan. This number does not include any children. Applicant has his wife, her parents, and their children in the United States. However, he submitted no information as to any other connections in the United States, or how he views his life in the United States. Virtually all of the information in this case consists of his answers to security clearance and counter-intelligence screening questionnaires. There is insufficient evidence to find that any of these mitigating conditions apply.

Based on my analysis of the available information, Applicant has not overcome the adverse inference of his family members' Afghan citizenship, the fact many of them still reside in Afghanistan, or of his visit there. Guideline B is found against Applicant.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. My Guideline B analysis is applicable to the whole-person analysis as well. As stated, Applicant has failed to show that he is not susceptible to foreign influence due to his family members who are present in Afghanistan, or Afghan citizens living in the United States. Accordingly, I

¹The 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 is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 (App. Bd. Feb. 15, 2006); ISCR case No. 99-0424 (App. Bd. Feb. 8, 2001).

cannot find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has not mitigated the security significance of his foreign connections. He is not eligible for a security clearance.

On balance, it is concluded that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge