



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



In the matter of:)
)
) ISCR Case No. 13-00355
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/22/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant, 53, was born in Afghanistan. He immigrated to the United States in 1985, and became a naturalized U.S. citizen in 1993. His wife is a naturalized U.S. citizen and they have four U.S.-born children. He was deployed in support of U.S. interests in Afghanistan. He has three siblings and extended family members that live in Afghanistan. One of his brothers is a high official in a sensitive position in the Afghan government. He failed to demonstrate that his contacts in Afghanistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States and his connections to family members. He failed to mitigate the foreign influence security concerns raised. Clearance is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on June 19, 2012. On June 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign

influence).¹ Applicant answered the SOR on November 2, 2013, and elected to have his case decided on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), dated January 22, 2014, was provided to him by transmittal letter dated February 6, 2014. Applicant received the FORM on March 13, 2014. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. He timely responded to the FORM and provided additional information that was made part of the record. The case was assigned to me on April 9, 2014.

Procedural Issue

Department Counsel requested I take administrative notice of certain facts concerning the government of the Islamic Republic of Afghanistan (Afghanistan). He provided source documents (all official U.S. Government publications) to show detail and context for those facts. Applicant did not object, and I granted Department Counsel's request.

Findings of Fact

Applicant admitted all SOR factual allegations with comments. His admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, including his SCAs, answers to the SOR, the FORM, his three written statements, and answers to two questionnaires, I make the following findings of fact.

Applicant is a 53-year-old linguist working for a government contractor in support of U.S. military forces deployed in Afghanistan. Applicant, his wife, and both their immediate and extended family members were born in Afghanistan, except for their children. He attended college in Afghanistan where he received his bachelor's degree in 1984. He left Afghanistan to avoid enlistment into that country's armed forces and travelled to Pakistan. He entered the United States as a refugee in 1985. He was sponsored and assisted by his brother (A), who at the time was a permanent U.S. resident. Applicant became a naturalized U.S. citizen in 1993. He married his wife in 1992. She became a naturalized U.S. citizen in 2000. He has four children, all are U.S. citizens by birth.

Applicant's parents and one of his brothers are deceased. Applicant's brother (A) became a naturalized U.S. citizen in the 1990s. According to Applicant, brother A owns a home in the United States, and his permanent residence is in the United States. From 1995 to 1998, A was employed by the government of another Middle East country as a legal advisor on sharia law. From 2001 to 2003, A was employed by the Afghan

¹ DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

government in an important government position. In 2005, A was selected to serve in a higher and sensitive government position where he has continued to work. A has been living in Afghanistan since 2005. Applicant has contact with A approximately twice a year.

Applicant has another brother (B) and a sister who are citizens and residents of Afghanistan along with their families. Applicant claimed that he has not had any contact with B or his sister since 1979. Applicant's siblings and their families live in areas in Afghanistan that the U.S. Department of State has identified as dangerous locations where there has been some loss of security. Applicant's mother-in-law is a citizen and resident of the United States. His father-in-law is deceased.

In 1999, Applicant travelled with his mother-in-law to Saudi Arabia for the Haj pilgrimage. He then travelled alone into Iran to visit with relatives on both sides of his parents' families. He was in Iran approximately 45 days. He has contact with his extended relatives living in Iran every two or three years. Applicant claimed he has never directly sent money or assistance to anyone in Afghanistan. However, when one of his friends or family member travelled to Afghanistan, he would send money, usually under \$500, to be given to charities in Afghanistan. His wife also has occasionally sent money (usually less than \$100) to Afghanistan for people in need.

Applicant worked as a linguist for government contractors and was deployed to Afghanistan in support of U.S. personnel from 2003 to 2007, and from 2008 to 2011. His employment was terminated when his security clearance was denied in 2010. He was hired by his current employer, another government contractor, in June 2012.

Applicant considers himself to be a proud American citizen. He averred that he would never do anything to hurt the United States. He renounced his Afghan citizenship when he became a naturalized U.S. citizen. Applicant has all of his property and financial interests in the United States. He owns his home and a rental property in the United States. He estimated his net worth to be over \$500,000. He owns no property or financial interests in any other country.

Applicant presented numerous letters of reference, certificates of appreciation, and a performance evaluation for his duties as a linguist in support of U.S. personnel deployed to Afghanistan. He is considered to be an outstanding linguist, excellent cultural advisor, and a dependable and hard worker. He was an invaluable asset to the numerous units he worked with because of his strong work ethic and desire to accomplish the mission. He demonstrated maturity and judgment, and displayed excellent interpersonal skills.

I take administrative notice of the following facts. Afghanistan is located in Southwestern Asia and borders Pakistan, Iran, and Russia. It has been an independent nation since 1919, after the British relinquished control. A monarchy ruled from 1919 until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. In 1979, Soviet forces invaded and occupied Afghanistan. A

resistance movement eventually led to an agreement known as the Geneva Accords, signed by Afghanistan, Pakistan, the United States, and the Soviet Union, which ensured Soviet forces withdrew by February 1989. The resistance party was not part of the Accords and refused to accept it. A civil war ensued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to anarchy and the existence of warlords. The Taliban sought to impose an extreme interpretation of Islam and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin Laden, al Qaida, and other terrorist organizations.

After the September 11, 2001 terrorist attacks, demands to expel Bin Laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power in November 2001. The new democratic government took power in 2004, after a popular election. Despite that election, terrorists, including al Qaida and the Taliban, continue to assert power and intimidation within the country. Safety and security are key issues, because these terrorists target United States and Afghan interests by suicide operations, bombings, assassinations, carjacking, assaults, and hostage taking. At this time, the risk of terrorist activity remains extremely high.

Afghanistan has significant human rights problems. Civilians continue to bear the brunt of the violence and increased attacks from terrorist organizations. The most significant human rights problems included credible reports of torture and abuse of detainees by Afghan security forces; widespread violence, including armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; pervasive official corruption; and endemic violence and societal discrimination against women. Corruption is endemic throughout society, and flows of money from the military, international donors, and the drug trade continue to exacerbate the problem.

Despite the loss of some key leaders, insurgents have adjusted their tactics to maintain momentum following the arrival of additional U.S. forces. It is suspected that the Taliban was most likely responsible for suppressing voter turnout in the August 2009 elections in key parts of the country. The Taliban's expansion of influence in northern Afghanistan since late 2007 has made the insurgency a country-wide threat.

Afghan leaders continue to face the eroding effect of official corruption and drug trade. Criminal networks and narcotics constitute a source of funding for the insurgency in Afghanistan. Other insurgent groups and anti-coalition organizations also operate in Afghanistan. Insurgents have targeted non-government organizations, journalists, government workers, and United Nation workers. Instability along the Pakistan-Afghan frontier continued to provide al Qaida with leadership mobility and the ability to conduct training and operational planning, targeting Western European and U.S. interests.

The U.S. Department of State has declared that the security threat to all American citizens in Afghanistan remains critical as no part of the country is immune to violence. Numerous terrorist organizations, including the Haqqani Network, the Afghan and Pakistani Taliban, al Qaida, and Lakshar-e-Tayyiba (LET) continue to operate

within Afghanistan orchestrating organized attacks against U.S. personnel and assets within the country.

In May 2012, the United States and Afghanistan signed a 10-year strategic partnership agreement that demonstrates the United States commitment to strengthening Afghanistan's sovereignty and stability. The Afghan central governmental capacity and effectiveness has increased, but local governance remains weak and all levels of government are plagued by governmental corruption. The convergence of insurgent, terrorist, and criminal networks is pervasive and constitutes a threat to Afghanistan's stability. Criminal networks, insurgent groups, and corrupt government officials are often interlinked via multi-layered connections, making ties between the officials and criminal activity difficult to prove and prosecute. These factors all contribute to popular disaffection with the government.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.

“[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The government’s concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

- (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 is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.² Applicant has contacts and a close relationship of affection and obligation with his brother (A), a resident of Afghanistan. He also has a

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

close relationship with his sister and brother (B), both residents and citizens of Afghanistan.

Moreover, from 1995 to 1998, Applicant's brother A was employed by the government of another Middle East country as a legal advisor on sharia law. From 2001 to 2003, A was employed by the Afghan government in an important government position. A was appointed by the Afghan president to a higher and sensitive position within his administration, and he has been working in that position since 2005.

These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Afghan agents, criminals, or terrorists operating in Afghanistan may exploit the opportunity to obtain information about the United States. With its negative human rights record, its government, and the violent insurgency that operates within the Afghan borders, it is conceivable that Applicant's family members could be vulnerable to coercion.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three foreign influence mitigating conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that the above mitigating conditions do not apply. Applicant's evidence is insufficient to establish that it is unlikely he will be placed in a position of having to choose between the interests of a foreign individual and the interests of the United States. Applicant's sister and brother B both are residents and citizens of Afghanistan.

Brother A, although a U.S. citizen, has been residing in Afghanistan since 2005 where he holds a high and sensitive position within the Afghan government. Applicant denies contact with his sister and one brother since 1979. However, he has contact with his brother holding a high-level position in the Afghan government at least twice a year. If members of the community, terrorists, criminals, or corrupt government officials became aware of his work for U.S. interests, his siblings and extended relatives could be in danger or placed at unnecessary risk.

In deciding whether Applicant's family members are in a position to be exploited, I considered Afghanistan's form of government. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Afghanistan do not pose a security risk.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives, terrorists, or criminals from Afghanistan seek or have sought classified or economic information from or through Applicant, his wife, siblings, or other relatives living in Afghanistan. However, we cannot rule out such a possibility in the future. There is evidence of insurgency operations being conducted in Afghanistan against American forces. There is also evidence that Afghanistan has active terrorist groups operating within its borders. It is possible that terrorists would attempt to coerce Applicant through his relatives living in Afghanistan, if they determined it was advantageous to do so. 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 United States and his connections to family members.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family members living in

Afghanistan. Applicant left Afghanistan in 1985, at age 25. He immigrated to the United States through Pakistan, and he became a naturalized U.S. citizen in 1993.

Applicant married his Afghan-born wife in 1992. She became a naturalized U.S. citizen in 2000. He has four children, all of whom are U.S. citizens by birth. He has made the United States his home since 1985, and has been a productive U.S. citizen. Applicant has established strong connections to the United States. All of Applicant's financial and property interests are in the United States. Additionally, he risked his life while working as a linguist in Afghanistan for deployed U.S. personnel.

Notwithstanding, the record evidence fails to support a determination that Applicant's ties and sense of obligation to the United State are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even under circumstances detrimental to his siblings and extended family members and friends in Afghanistan.

Applicant's contact with brother A (holding a high and sensitive position in the Afghan government), although sporadic, is not casual, and it creates a heightened risk of foreign influence and exploitation. Brother A sponsored and helped Applicant to get established in the United States. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Afghanistan who might be coerced by terrorists, criminals, or governmental entities in that country.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline B in my whole-person analysis. Considering the evidence as a whole, Applicant's favorable evidence is insufficient to demonstrate that his contacts in Afghanistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States and his connections to family members. I specifically considered Applicant's service to U.S. interests in Afghanistan under dangerous circumstances. On balance, and considering the evidence as a whole, Applicant failed to mitigate the Guideline B security 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge