



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



In the matter of:)
)
) ISCR Case No. 13-00383
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

January 30, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant’s brother and sister-in-law are citizens and residents of Afghanistan. Applicant owns office space in the United Arab Emirates (UAE) valued at \$181,000. He traveled to the UAE eight times between 2005 and 2012. Applicant fully mitigated the Foreign Influence and Personal Conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 26, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 on September 1, 2006.

Applicant answered the Statement of Reasons on August 13, 2013 (Item 3). In his Answer, Applicant elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 10, 2013. A complete copy of the file of relevant material (FORM) was received by Applicant on December 4, 2013. He was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant submitted a response (Response) on December 7, 2013. Department Counsel did not have any objections to Applicant's Response, and it was admitted into the record. The case was assigned to me on January 13, 2014.

Procedural Ruling

Request to take Administrative Notice

In the FORM, the Government requested I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a five-page summary of the facts, with citations to nine Government documents pertaining to Afghanistan. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 59 years old. Applicant was born in Afghanistan. From 1975 to 1979 he studied at a language institute in several other nations. In 1979 Applicant immigrated to the United States after he sought and was granted political asylum due to the Russian invasion of Afghanistan. He was naturalized as a U.S. citizen in January 1986. In April 2010 Applicant was hired an interpreter for a U.S. government contractor. He seeks a security clearance in connection with his employment. (Response; Item 4; Item 15.)

Applicant has extensive family in the United States. He is married and has two children, ages 20 and 14. His wife and children are citizens and residents of the United States. His wife is a school teacher and his children are both students. Of his five brothers and two sisters, four of Applicant's brothers and both of Applicant's sisters reside in the United States and are U.S. citizens. All of these siblings are married to U.S. citizens. Applicant's mother also is a U.S. citizen residing in the United States. Applicant's father is deceased.¹ Applicant is close to his mother and has daily communications with her. (Response; Item 5; Item 6; Item 11; Item 15.)

Subparagraph 1.a of the SOR alleged that Applicant has a brother and sister-in-law that are citizens and residents of Afghanistan. Applicant admitted this allegation. This brother served in the Afghan Army from 1972 to 1996, and reached the rank of Colonel. He fled the Afghan Army when the Taliban took control of the area of Kabul. At

¹ Applicant's father served as a senior officer in the Afghan Army. He was imprisoned for two years "during the Soviet conflict." He fled Afghanistan and immigrated to the United States. He passed away in the United States in 2001. (Item 7; Item 12; Item 16.)

that time, he fled Afghanistan and moved to Pakistan. He returned to Afghanistan in 2004. Applicant's brother currently lives in Kabul with his wife and four children. He is retired and does not work. His wife, Applicant's sister-in-law, is a school teacher. Applicant traveled to Afghanistan to visit his brother in April 2005, after not having seen him for 26 years. He estimated he communicates with this brother once a month currently, and does not discuss work related subjects. (Answer; Response; Item 5; Item 6; Item 7; Item 8; Item 11; Item 15; Item 16.)

In 2006 Applicant purchased office space in Dubai, UAE, as an investment, for approximately \$181,000, as alleged in subparagraph 1.b. He financed the purchase with a home equity loan and his personal savings. All payments for the purchase were completed before he was hired by the government contractor. The office space was under construction at the time of investment, but construction was completed in 2010. He is unable to rent it or sell it at this time due to a decline in the real estate market in Dubai. This is the only foreign property, account, or investment Applicant possesses. (Answer; Response; Item 15; Item 16.)

The government alleged, in subparagraph 1.c, that Applicant has traveled to Dubai, UAE, 8 times between 2005 and 2012. Applicant traveled to Dubai in April 2005 and May 2005 in transit to-and-from visiting his brother in Afghanistan, as identified above. He traveled again to Dubai in August to September 2006 to purchase his investment property. In January-February 2010 Applicant traveled to Dubai to walk through his completed office space and receive the keys to the space. His travels to Dubai in July 2011, August 2011, May 2012, and June 2012 were in transit, as he traveled for his work as a translator in Afghanistan. (Answer; Response; Item 4; Item 13; Item 15; Item 16.)

Applicant earns a salary of approximately \$185,000 per year. He owns a home in the United States. Applicant has approximately \$70,000 in savings. (Item 15.) In his Response, he indicated:

I understand all my duties as a responsible citizen of the U.S. and have a very deep and longstanding relationship and loyalty for the U.S. being a U.S. citizen and wife and children living in the country, I will always do my best to protect the interest of the United States and my family living there. I will never take any decision which would jeopardize the lives of my wife, children, friends or any U.S. citizen nor would let anyone else to do so. And I always comply with existing agency requirement to report any threat or suspicious activity. (Response.)

Applicant is highly respected by those who know him professionally. A USMC brigadier general who wrote a letter of support on Applicant's behalf indicated Applicant "is extremely dedicated to the mission" and "provides sound judgment and initiative." (Response.)

Afghanistan

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 signing of this agreement marks the culmination of 10 years of United States involvement in Afghanistan, during which the U.S. led coalition attempted to disrupt, dismantle, and defeat al-Qaida and its affiliates in Afghanistan.

Despite the progress made since the Taliban was deposed, Afghanistan still faces many challenges including fighting of insurgents, preventing the return or resurgence of al-Qaida, recovering from decades of civil strife, and rebuilding infrastructure. No parts of Afghanistan are immune from violence. Even the capital, Kabul, and its suburbs, are considered at high risk for militant attacks, including rocket attacks, vehicle-borne IEDs, direct-fire attacks, and suicide bombings. Extremist organizations have staged attacks on Afghan and U.S. troops in Afghanistan, including the September 13, 2011 attack on the U.S. Embassy in Kabul. Further, U.S. citizens, who are also citizens of Afghanistan, may be subject to other laws that impose special obligations. The Department of State warns U.S. citizens against travel to Afghanistan.

Additionally, human rights problems continue to exist in Afghanistan. Those include reports of torture and abuse of detainees by Afghan security forces; widespread violence and indiscriminate attacks on civilians; pervasive official corruption; and endemic violence. Among the many human rights concerns are reports of extrajudicial killings; poor prison conditions; allegations of abuses and torture by local security forces; arbitrary arrests and detentions; judicial corruption and ineffectiveness; and violations of privacy rights.

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, 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 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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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. 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 as to 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

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in 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.

The Government argues that the following guidelines note conditions that could raise security concerns 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 country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

AG ¶ 7(a) requires the presence of both family members (or business or professional associates, friends, or other persons) who are citizens and/or residents of a foreign nation and substantial evidence of a heightened risk. Applicant's brother and sister-in-law are citizens and residents in Afghanistan. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist groups and other criminal organizations operate within Afghanistan. Further, the government of Afghanistan has been identified as committing human rights violations. In this instance, a heightened risk is present. The evidence is sufficient to raise AG ¶ 7(a), with respect to Applicant's brother and sister-in-law.

Applicant's connections to his brother and sister-in-law could create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help his brother or sister-in-law by providing that information. AG ¶ 7(b) applies.

To be fully applicable, AG ¶ 7(e) requires the not only the presence of a substantial business, financial, or property interest in a foreign country, but also requires evidence of a heightened risk associated with that foreign interest. Applicant admits he owns office space in the UAE, which he purchased in 2002 for \$181,000. His travel to the UAE in 2006 and 2010 in association with the property's purchase, was prior to becoming a government contractor. His subsequent travel to UAE in July 2011, August 2011, May 2012, and June 2012, were only for transit in relationship to his employment with the government contractor. While Applicant owns property in the UAE, the Government failed to produce evidence to support administrative notice or otherwise indicate that owning property in the UAE could subject him to any type of heightened risk of foreign influence or exploitation. Security concerns under AG ¶ 7(e) were not established.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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.

Applicant has submitted evidence that shows he has substantial family ties in the United States that outweigh his relationship to Afghanistan and his relatives there. He left Afghanistan at age 25 to escape the Russian invasion. He has lived in the United States much longer than he lived in Afghanistan. His wife, two children, mother, and six of his seven siblings all reside in the United States as U.S. citizens. His friends are in the United States. He owns a home and has savings here. His wife works for a local school system and they are entrenched in their local community. On the other hand, his ties to Afghanistan are limited to his continuing relationship to his brother and sister-in-law. Since leaving Afghanistan in 1979, he has visited his brother once in 28 years. While he cares about his brother in Afghanistan, he has worked hard to build a life in the United States. His allegiances are to his chosen nation, not that of his birth, as evidenced by his strong recommendations from the military leadership that utilizes him as an interpreter for the U.S. forces. Applicant can be expected to resolve any conflict of interests or attempted coercion in favor of the U.S. interests. AG ¶ 8(b) applies.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The Government argued the following disqualifying condition is potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;
- (2) disruptive, violent, or other inappropriate behavior in the workplace;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

The allegation under Guideline E, SOR subparagraph 2.a, states, "That information set forth in allegations 1.a. through 1.c. above," and suggests that Applicant's brother and sister-in-law in Afghanistan; his property in the UEA; and his travel to the UAE raise personal conduct concerns. The Government failed to articulate an argument in the FORM regarding the application of this specific disqualifying condition, except to simply state, "these facts also support Guideline E disqualifying condition DC 16(d)."

The allegations, when combined with all available information, fail to support "a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information." Applicant purchased the property in the UAE prior to becoming an employee of a government contractor. He visited the UAE twice in relation to this property, also prior to being hired as a translator. His other visits to the UAE were in transit on his way to Afghanistan to visit his brother in 2005, and later to work as a translator for the government contractor in 2011 and 2012. There was no evidence of any risks of coercion identified in the record evidence with respect to the UAE. The risk pertaining solely to Applicant's brother and sister-in-law was "explicitly covered" under Guideline B and do not add any additional security significance when considered in light of the entire record under Guideline E. AG ¶ 16(d) does not apply.

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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but warrant additional comment.

Applicant is a patriotic American citizen, whose work has been of particular value to our military mission in Afghanistan. He presented considerable evidence showing that his allegiance is to the United States and not Afghanistan or the UAE. Accordingly, I 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 mitigated the security significance of his foreign connections. He is eligible for a security clearance.

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 |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a: | 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 or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein

Administrative Judge