



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



In the matter of:)
)
-----) ISCR Case No. 13-00386
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

04/01/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny him a security clearance to work in the defense industry. The evidence shows he has explained and mitigated the foreign influence security concern based on his strong ties to the United States, which outweigh and overcome his ties to Afghanistan. Accordingly, this case is decided for Applicant.

Statement of the Case

On June 14, 2013, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the

national interest to grant Applicant access to classified information.¹ The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline B for foreign influence based on his family ties to Afghanistan.

Applicant timely answered the SOR and requested a hearing. In his answer, he admitted the factual allegations of family ties to Afghanistan as set forth in SOR ¶¶ 1.a–1.f as follows: (1) your wife, daughter, and son are citizens of Afghanistan and residents in the United States; (2) your mother-in-law is an Afghan citizen and resident; (3) your son-in-law is an Afghan citizen and resident in the United States and currently employed by an Afghan ministry; and (4) your brother is an Afghan citizen and resident in Germany. He also provided detailed explanations.

The case was assigned to another judge on September 14, 2013, and reassigned to me January 23, 2014. The hearing was scheduled for March 3, 2014, but did not take place due to adverse winter weather. The rescheduled hearing on March 12, 2014, was conducted by video teleconference (VTC). The transcript (Tr.) was received March 19, 2014.

Findings of Fact

Applicant is a 63-year-old employee of a company engaged in defense contracting. He works as a linguist in support of the U.S. armed forces in Afghanistan, his country of birth. He has had this job since September 2010, and he has worked in Afghanistan since October 2010. He is seeking to obtain a security clearance for the first time.

Applicant was born and raised in Afghanistan. He earned a bachelor's degree from an Afghan university in 1974. He along with his family left Afghanistan in 1983, due to the Communist (Soviet Union) invasion. His father (who died in 1971) was a state senator and was viewed as an enemy of the Communists, which necessitated the family's departure. They lived in India for about one year and during that time they applied for refugee status with the United Nations. In 1984, they came to the United States and sought political asylum, which was granted. He became a permanent resident alien in 1990, and he obtained U.S. citizenship in April 2012.

Applicant's employment history in the United States is not unusual. He worked as a driver for different companies beginning in 1988 and ending in 2010. He has since been employed as a linguist for the same company. He completed his most recent

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

security clearance application in December 2012.² He underwent counterintelligence-focused security screening in 2010 and 2012.³ On both occasions, it was concluded that no evidence was present to indicate that Applicant was a security risk based on the available information at that time.

Applicant is married with adult children. His immediate family lives in the United States, and the status of various family members is summarized in the following table.

<i>Relationship</i>	<i>Country of Birth</i>	<i>Citizenship</i>	<i>Residence</i>
Father	Afghanistan	Afghan	Deceased
Mother	Afghanistan	Afghan	Deceased
Wife	Afghanistan	Afghan	United States
Daughter	Afghanistan	Afghan	United States
Son	Afghanistan	Afghan	United States
Daughter	United States	United States	United States
Daughter	United States	United States	United States
Mother-in-Law	Afghanistan	Afghan	Afghanistan
Father-in-Law	Afghanistan	Afghan	Deceased
Brother (2)	Afghanistan	United States	United States
Brother	Afghanistan	Afghan	Germany
Sisters (2)	Afghanistan	United States	United States

Applicant's wife, daughter, and son are U.S. permanent resident aliens. Applicant has had no contact or relationship with his brother in Germany for more than 20 years. In addition, he has two sisters-in-law (one born in Afghanistan the other in India) who are U.S. citizens and residents. He also has a brother-in-law who was born in Afghanistan and who is a U.S. citizen and resident. He has a son-in-law who was born in Afghanistan who is a U.S. permanent resident alien. He was working for an Afghan ministry, but is now employed by a contractor working in support of the U.S. armed forces in Afghanistan. Applicant's family members in the United States live in the same metropolitan area.

Applicant's mother-in-law is an Afghan citizen and resident. Applicant has little contact with her, although his wife has an ongoing mother-daughter relationship with

² Exhibits 1, 2, 3, and 4.

³ Exhibits 5 and 6 (much of the information in the factual findings is gleaned from these documents).

her. They do not provide financial support to the mother-in-law.⁴ His wife traveled to Afghanistan within the last six months to visit her mother.⁵

Applicant has a former son-in-law who is a citizen and resident of Afghanistan. Due to the divorce, the former son-in-law has expressed some anger and apparent threats toward Applicant's family.⁶ The former son-in-law is located about 200 to 300 kilometers from Applicant's work location (a U.S. military base) in Afghanistan, and Applicant's last contact with him was in 2008 or 2009.⁷

Applicant stated that his work as a linguist in Afghanistan is dangerous duty—"Every single step is dangerous."⁸ He stated that he has been subject to indirect fire and small arms fire on multiple occasions.⁹ Recognizing the danger of his job, he stated that he does not disclose his work activities to family or friends.¹⁰ He has a good record of employment as a linguist, which is documented by letters of recommendation, military certificates of appreciation or achievement, military coins, and an outstanding performance appraisal.¹¹

In response to Department Counsel's written request,¹² I took administrative or official notice of certain facts about Afghanistan, and they are summarized as follows. After the 1979 invasion and subsequent withdrawal of the then Soviet Union, Afghanistan experienced a civil war among several factions, including the Taliban. By the end of 1998, the Taliban controlled most of Afghanistan and provided sanctuary to Osama bin Laden, al Qaeda, and other terrorist groups. U.S. military forces, along with forces from a coalition partnership, forced the Taliban from power by November 2001. With U.S. assistance and support, a new democratic government took office in 2004, which continues to this day. In spite of efforts by the United States and the Afghan government, Afghanistan continues to be a violent, unsafe, and unstable country, which is subject to terrorist attacks and suicide bombings. Afghanistan's human-rights record is generally poor, due to the continuing insurgency, the weak government, and ongoing recovery efforts from years of war.

⁴ Tr. 77.

⁵ Tr. 62–63.

⁶ Tr. 57–59.

⁷ Tr. 75–78.

⁸ Tr. 70.

⁹ Tr. 70–74.

¹⁰ Tr. 48–49.

¹¹ Exhibit A.

¹² Exhibit 7.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹³ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁴ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁵ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²¹ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²²

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense

¹³ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁴ 484 U.S. at 531.

¹⁵ Directive, ¶ 3.2.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ *Egan*, 484 U.S. at 531.

²² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²³ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

The gravamen of the SOR is whether Applicant's family ties to Afghanistan, his country of birth, disqualify him from eligibility for a security clearance. Under Guideline B for foreign influence,²⁴ the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

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.²⁵

The guideline contains several disqualifying conditions. Given the evidence of Applicant's family ties to Afghanistan, I have especially considered the following disqualifying conditions:

AG ¶ 7(a) contact with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 7(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified information or technology and the

²³ Executive Order 10865, § 7.

²⁴ AG ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁵ AG ¶ 6.

individual's desire to help a foreign person, group, or country by providing that information.

The guideline also contains several mitigating conditions. Given the evidence here, I have especially considered the following mitigating conditions:

AG ¶ 8(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 United States; and

AG ¶ 8(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant, age 63, is a mature adult who is now working as a linguist in support of the U.S. armed forces in Afghanistan, a place known as a high-risk environment for our soldiers and the contractors who support them. He has not resided in Afghanistan since 1983 and he has lived in the United States since 1984, which are substantial periods of time. He and his wife, adult children, and extended family reside in the United States, and they are U.S. citizens or permanent resident aliens. The United States has been conducting military operations in Afghanistan since 2001, and Applicant is now performing important service in support of that mission. Taken together, his ties to the United States are much stronger than his ties to Afghanistan, and these facts and circumstances weigh in his favor.

The security clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern, and that is the situation here. Like most first-generation immigrants, Applicant has some ties to his country of birth, primarily his mother-in-law via the close relationship that his wife has with her mother. This should not be dismissed or overlooked as fanciful or unrealistic, because the circumstances in Afghanistan are dangerous and unstable and create a heightened risk of foreign influence. With that said, his ties to people in Afghanistan are normal and not extensive. In addition, any concern about the potential for pressure, coercion, exploitation, or duress due to the former son-in-law now in Afghanistan (a matter not alleged in the SOR) is attenuated by the passage of time, the lack of contact, the substantial distance between Applicant's work location and the former son-in-law, and the lack of evidence showing that the former son-in-law is even aware of Applicant's presence in Afghanistan. Likewise, I am satisfied that this is not a case of "divided loyalties" as contemplated by the guideline. Instead, I am satisfied that Applicant has both feet planted firmly in the United States and his ties to this country are strong and will become stronger in the future. Any

security risk or concern presented by his ties to Afghanistan is outweighed and overcome by his much stronger ties to the United States.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating the evidence in light of the whole-person concept,²⁶ I conclude Applicant has mitigated the foreign influence security concern. In reaching this conclusion, I especially considered the following matters: (1) the favorable results of counterintelligence-focused security screening in 2010 and 2012; (2) his record of good employment as a linguist; and (3) his important service in Afghanistan under difficult and dangerous conditions. Indeed, at his age, Applicant could be sitting at home collecting Social Security retirement benefits, instead he's doing this job. Accordingly, I conclude he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a–1.f:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²⁶ AG ¶ 2(a)(1)–(9).