



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



In the matter of:)	
)	
)	ICSR Case No. 13-00432
)	
Applicant for Security Clearance)	

Appearances

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

06/04/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted. Applicant mitigated security concerns for foreign influence.

Statement of the Case

On October 15, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment as an interpreter for a defense contractor. (Item 3) The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated May 29, 2013, detailing security concerns for foreign influence. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on September 23, 2013. He admitted the three factual allegations concerning foreign influence. He attached a detailed statement explaining his response. Applicant elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on

February 25, 2014. Applicant received a complete file of relevant material (FORM) on April 2, 2014, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided additional information in response to the FORM by a sworn statement dated April 19, 2014. The case was assigned to me on June 2, 2014.

Procedural Issues

Department Counsel requested as part of the FORM that administrative notice be taken of certain facts concerning Afghanistan. I have considered the request and the documents provided by Department Counsel. (Items 4 through 10) Since Applicant mentioned in his response to the FORM that his father is now in Tajikistan, I, *sua sponte*, will take administrative notice of facts concerning that country. (Items 11 and 12) Administrative notice is taken of the facts pertaining to Afghanistan and Tajikistan as noted below in the Findings of Fact.

Findings of Fact

After a thorough review of the pleadings, I make the following essential findings of fact.

Applicant is 30 years old and has been a linguist for the U.S. armed forces serving in Afghanistan since October 2012. He previously served as an interpreter/linguist from October 2009 until October 2012, for a defense contractor training military members for deployment to Afghanistan.

Applicant was born in Afghanistan in 1983. He and his family left Afghanistan in 1992 when he was nine-years-old because of the social problems in the country, and moved to Pakistan. Shortly thereafter, his parents divorced and Applicant, his mother, and his other siblings moved to the Netherlands as refugees in May 1994. He was eleven years old at the time. He, his mother, and his siblings were declared refugees and all became citizens of the Netherlands and received Netherlands' passports. His mother and some of his siblings are still residents and citizens of the Netherlands. He also has siblings residing in the United States and Canada. His Netherlands' passport has been renewed and now expires in June 2014. Applicant attended school and worked in the Netherlands. He has surrendered the Netherlands' passport to his facility security officer (FSO). There are no allegations that any of his family members, except his father, are citizens of Afghanistan.

Applicant's father moved to Tajikistan when he divorced Applicant's mother. He became a businessman with a lucrative export-import and manufacturing business. Applicant left the Netherlands and came to the United States in September 2004. He was granted a U.S. business visa and moved to the United States. Applicant's father received permanent resident status in 2002. This enabled him to sponsor Applicant's entry into the United States. Applicant has lived, worked, and attended school in the United States since then. He became a U. S. citizen in 2011 and received a U.S. passport which does not expire until 2021. He married a naturalized U.S. citizen in

November 2009, and they have a child who is a U.S. citizen. (Item 2, Response to SOR, dated November 18, 2013; Item 3, e-QIP, dated October 15, 2012; Item 4, Counterintelligence Security Screening Questionnaire, date November 1, 2012)

The SOR allegations concern actions by and the status of Applicant's father. The SOR alleges that Applicant's father is a citizen of Afghanistan (SOR 1.a); that from 2004 to 2008 his father worked for the Afghan government (SOR 1.b); and that his father has commercial property in Afghanistan worth over \$3,000,000 (SOR 1.c). Applicant, in response to the SOR, admits the three factual allegations but explained that his father was successful in his business interest in Tajikistan and invested his assets in a hotel in Kabul, Afghanistan. The value of his investment in the hotel will decrease as U.S. forces leave Afghanistan. Applicant further explained that he and his father seldom communicate on work-related issues since they are busy and live separate lives. In response to a question on the counterintelligence security questionnaire, Applicant noted that he has weekly telephone contact with his father. (Item 4) Applicant also noted that he recently communicated with his father over the internet concerning the security clearance process. He had not communicated with his father for over six months. His father told him in the conversation that he felt more at home in the United States than in Tajikistan. (Response to FORM, dated April 19, 2014)

Applicant noted some factual disagreements with a statement made in the FORM. He pointed out that his father is not "closely connected to Afghanistan and its government" and he does not reside "in a very dangerous part of Afghanistan." In 2004 to 2008, his father worked as a business attaché for the Afghan Ministry of Commerce. In 2008, after determining that the Afghan government was corrupt, his father stopped working for the Afghan government. He has not worked for the Afghan government since then. His father was affiliated in the United States with the Afghan-American Chamber of Commerce, a U.S. based initiative to promote joint social-economic interests. He has not been affiliated with the organization in over three years. When not in the United States, his father resides in Tajikistan to manage his business interest. Applicant presented his father's Tajikistan visa to show he resides in that country periodically. His father travels to Afghanistan on business to oversee his property interest in the hotel a few of times a year. (Response to FORM, dated April 19, 2014)

Applicant presented Letters of Commendation and Recommendation and Certificates of Service for his support of the U.S. armed forces both in his answer to the SOR and his response to the FORM. The letters of recommendation show that Applicant was well regarded by the military personnel he taught about Afghanistan. He was credited with a remarkable natural teaching talent enabling him to successfully convey knowledge of Afghan culture, customs, and lifestyle. He exhibited patience with students and a desire to convey knowledge. As a translator in Afghanistan for the last two years, he provided translation and linguistic services in a detention center. He was a fundamental player in translation of documents, and was sought by senior leaders within the military unit because of his high degree of integrity, responsibility, and ambition. He is so diligent, patient, and determined that his leaders considered him an integral key to accomplishing their detention mission. (See, Response to SOR and Response to FORM)

Afghanistan

Afghanistan has been an independent nation since 1919, and it was a monarchy until a military coup in 1973. Following a second military coup in 1978, a Marxist government emerged. In December 1979, the Soviet Union invaded and occupied Afghanistan, but they were resisted by the mujahedeen. The Soviet Union withdrew in February 1989 pursuant to an agreement signed by Pakistan, Afghanistan, the United States, and the Soviet Union. The mujahedeen were not a party to the agreement and refused to abide by it. The result was a civil war among several factions, including the Taliban. By the end of 1998, the Taliban controlled most of Afghanistan, committed atrocities against minority populations, and provided sanctuary to terrorist organizations. U.S. military forces, along with forces from a coalition partnership, forced the Taliban out of power by November 2001. With the assistance and support of the United States, a new democratic government took office in 2004.

Afghanistan formed a democratic government in 2004. The United States and its coalition partners have over 50,000 troops serving in Afghanistan assisting the Afghan government in maintaining peace and stability in the country. Even though progress has been made since then, Afghanistan faces many challenges including defeating terrorists and insurgents, recovering from decades of civil strife, and rebuilding an economy and infrastructure. The Taliban-backed insurgency has continued with frequent, sophisticated, dangerous, and destabilizing activities in spite of United States and coalition military operations. Civilians continue to bear the brunt of the violence. The Taliban continues to maintain momentum in spite of losses to their leadership. Armed conflict has spread to almost one-third of the country. The lack of security in many areas and generally low government capacity and competency has hampered efforts at self-governance and economic development. There is continued government corruption and substantial drug trade.

Afghanistan's human rights record is generally poor with extrajudicial killings, torture, poor prison conditions, official impunity, prolonged pretrial detention, restrictions on freedom of press and religion, violence against women, sexual abuse against children, and human trafficking. Its poor human rights record is due to the continuing insurgency, the weak government, and ongoing recovery efforts from two decades of war. In spite of efforts by the United States and the government of Afghanistan, it continues to be a violent, unsafe, unstable country. The weak government and internal instability have enabled hostile states, non-state actors, terrorists, and insurgents to continue operating in Afghanistan, including groups hostile to the United States. Insurgents use narcotics trafficking and kidnapping to finance their military and technical capabilities. Suicide bombing attacks continue to inflict casualties. The Taliban has strengthened its activities because of Pakistan funding sources, the drug trade, and kidnappings. The Taliban insurgent operations result in numerous attacks and deaths targeted at non-government organizations, journalists, government workers, and United Nation workers. There are militant attacks by rockets, vehicle-borne explosive devices, and suicide bombing, even in the capital city, Kabul. The United States Department of State classifies the situation in Afghanistan as a critical security threat to United States citizens.

Tajikistan

The United States established diplomatic relations with Tajikistan in 1992 following its independence from the Soviet Union. Tajikistan faces many challenges, including its long border with Afghanistan that is difficult to manage. There is widespread corruption, inadequate health and education systems, and food and energy shortages. There are threats by extremists, radicals, terrorists, and drug lords. However, the United States and Tajikistan have a broad based relationship, and cooperate in such areas as counter-narcotics, counter-terrorism, as well as regional growth and stability. In 2010, the countries launched a bilateral consultation process to enhance cooperation. Tajikistan has been a strong partner with the United States and other international forces to bring security and peace to Afghanistan. Tajikistan plays an important role by providing supply and transit routes.

Tajikistan is one of the poorest countries in the world and it depends on remittances and community exports that are vulnerable to global conditions. The United States and other Central Asian countries have signed a trade and investment framework agreement with Tajikistan. The plan is to establish a regional forum to discuss ways to improve investments and expand trade. Tajikistan belongs to the United Nations, Euro-Atlantic Partnership Council, Organization for Security and Cooperation in Europe, World Trade Organization, the International Monetary Fund, World Bank, and the North Atlantic Treaty Organization (NATO)'s Partnership for Peace. (Item 11, U.S, Department of State Relations with Tajikistan, dated February 10, 2014)

Tajikistan's population is more than 90% Muslim, the majority Sunni Islamists. There are many Muslim places of worship in the country, but only a limited number of members of other religions in the country. The Tajikistan Constitution protects religious freedom, but other laws and policies restrict religious freedom. Religious organizations and institutions must register with the government, and the country's president has an executive office that monitors religious development and formulates the government's religious policy. The law requires that all religious organizations wishing to provide religious instruction must register with the government. Islam is taught in the public schools, and there is a Muslim institution of higher learning in the country. There is a strictly enforced religious-inspired dress code, and the government tightly controls the publication, importation, and distribution of religious literature. Pre-approval for publication and distribution of printed material is required. Religious classes cannot be taught in a private home but only in a public school. Some religious minority communities continue to report that local officials obstruct their efforts to register new churches, and intimidate community members. The government tightly controls religious instruction. Officials inspect bookstores, newsstands, kiosks, markets, and mosques for unregistered religious materials. There are reports of societal abuses or discrimination based on religious affiliation, belief, or practice. (Item 12, International Religious Freedom Report for 2011, U.S. Department of State)

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 must be considered 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.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

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 the U.S. interest, 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 consideration 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 ¶ 6)

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. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of the governments in Afghanistan and Tajikistan, their relationship with the United States, the presence of U.S. and coalition forces in the countries, and human rights records of both countries are relevant in assessing the likelihood that an applicant's family members may be vulnerable to government coercion. 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 government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.

Applicant's father is a citizen of Afghanistan. He is the only family member that still is an Afghan citizen. He worked for the Afghan government in the past as a business attaché from 2004 until 2008. He stopped working for the government because of the corruption in the government. Applicant presented sufficient information to establish that while his father is a citizen of Afghanistan, he is a resident of both Tajikistan and the United States. Applicant's father was a successful businessman in Tajikistan who invested his assets in business interests in Afghanistan. He visits Afghanistan periodically but resides between the United States and Tajikistan. His father's presence in Tajikistan and visits to Afghanistan may place Applicant in a position where he is vulnerable to pressure or coercion by a foreign interest. His father's presence in these countries may present a security concern because of the potential to manipulate or induce Applicant to help his father or a foreign person or group in a way that is not in the U.S. interest.

Three disqualifying conditions are raised by the facts and are relevant to the security concerns raised in SOR allegations 1.a, 1.b, and 1.c: 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); 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information); and AG ¶ 7(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).

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not in a position to be exploited. The Appeal Board consistently applied this mitigating condition narrowly, holding that an applicant should not be placed in a position where he or she is forced to make a choice between the interests of the family member and the interests of the United States. Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict of interest in favor of the U.S. interest.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The three disqualifying conditions require evidence of a “heightened risk.” 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. The nature of Applicant’s contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. An applicant with foreign family ties to a country that presents a heightened risk has a very heavy burden of persuasion to show that neither he nor his family member are subject to influence by that country. The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. One factor that heightens the risk in Applicant’s case is the threat of violence, harassment, repressions, and terrorism in both Afghanistan and Tajikistan. There is a heightened risk presented because Applicant’s father has ties to and presence in Afghanistan and Tajikistan, two very dangerous countries.

Applicant raised facts to mitigate the security concerns arising from his father’s presence and activities in Afghanistan and Tajikistan. I have considered Foreign Influence 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 U.S.); 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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest); and AG ¶ 8(c) (contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation).

The nature of the Afghan government, the threats from terrorist organizations operating in the country, the disregard for human rights, and the hostility of the Taliban to the United States, place a heavy burden on Applicant in mitigating the disqualifying

conditions and the security concerns raised for the country. While the concerns for terrorism, the nature of the government, religious freedom, and other factors are not as predominate as they are for Afghanistan, there is still security concerns raised by the same concerns in Tajikistan. Applicant also has a heavy burden to mitigate security concerns for that country.

There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. Applicant has contact with his father either weekly by telephone or recently by internet. Applicant's father is the only family member with any connection to Afghanistan or Tajikistan. The father's connections to the countries are limited. The father is an Afghan citizen but he resides between Tajikistan and the United States. He resides in Tajikistan when needed to manage his business interest. While he at one time worked for the Afghan government, he left his position over five years ago because of government corruption. This indicates that he has no further connection to the government or sense of loyalty to the Afghan government. While Applicant's father has a substantial interest in a business property in Afghanistan, there is no indication that Applicant has any claim to that asset. The father also has substantial business interests in Tajikistan and the United States. Applicant's father's connection to Tajikistan is his occasional residence there and a business interest. Applicant, himself, has no connection to Afghanistan or Tajikistan. He left Afghanistan many years ago, has no known family members in the country, and he only returned when he was employed in support of U.S. armed forces. He has never been to Tajikistan and his only connection is his father's periodic residence in that country. The risk presented by his father is heightened merely because of the nature of the conditions in Afghanistan and Tajikistan

On the other hand, Applicant has strong ties to the United States. He came to the United States as a teenager and has been a U.S. resident for over ten years, one third of his life, and a U.S. citizen for a few years. He helped train U.S. forces for service in Afghanistan, and has served for the last two years as an interpreter in a detention facility for U.S. armed forces in Afghanistan. His supervisors praised his service, and considered him an excellent worker who had provided invaluable service to the U.S. armed forces. During his service he protected the national security interest of the United States. There is no indication during that time that he improperly handled classified information. 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, there is 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.

More importantly, Applicant's loyalty to the United States is such that it is unlikely that Applicant could be placed in a position to choose between any sense of loyalty or obligation he has to his father and his sense of loyalty or obligation to the United States. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. There is no risk to the national interest if Applicant has access to classified information. The mitigating conditions in AG ¶¶ 8(a), (b), and (c) apply. Applicant has met his heavy burden to show that his father does not cause a security concern for him. I conclude that Applicant has mitigated security concerns for foreign influence.

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 access to sensitive information 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 carefully considered all of the circumstances discussed above in regard to disqualifying and mitigating conditions as well as the following factors in light of the whole-person concept. The "whole-person concept" requires consideration of all available information about Applicant, not a single item in isolation, to reach a commonsense determination concerning Applicant's security worthiness.

I considered that Applicant came to the United States over ten years ago. I considered that Applicant has served as a trainer preparing soldiers to deploy to Afghanistan and as an interpreter for U.S. armed forces in Afghanistan. I considered that his superiors praised his service to the United States Army and Air Force, and considered him an excellent worker who provided invaluable service to the our deployed forces. During his service, he protected the national security interest of the United States and there is no indication that he did not properly handle classified information. The Government has a compelling interest to protect sensitive information. This

requires that any doubt about the risks associated with Applicant's foreign contacts be resolved in favor of the Government. Applicant's father and his foreign interests do not create an unacceptable risk for Applicant that must be resolved in favor of the Government. Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for access to classified information. Applicant has met the heavy burden to mitigate the potential security concerns for foreign influence arising from his family's connection to Afghanistan. Applicant is granted access to classified information.

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

Subparagraphs 1.a – 1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge