



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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 -----) ISCR Case No. 13-00625
)
)
 Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

January 10, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On July 2, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. (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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on September 12, 2013, and she requested that her case be decided on the written record in lieu of a hearing. (Item 3.) On October 31, 2013, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered eight documentary exhibits. (Items 1-8.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on December 30, 2013. Applicant submitted additional evidence, which has been identified and entered into evidence without objection as Item A. The case was assigned to this Administrative Judge on

December 17, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel requested in the FORM that I take administrative notice of certain facts relating to the country of Afghanistan that were reviewed in the FORM. The documents upon which the facts were based have been referred to in the FORM as source documents I through IX. The brief summary of the facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 29 years old. She was born in Afghanistan. She left Afghanistan in March 2005, and became a naturalized United States citizen on April 4, 2012. She attended a United States adult school from May 2006 to December 2007, and a Junior College from September 2008 to July 2010. Applicant had an Afghanistani passport, issued in May 2009, which was scheduled to expire on May 2014. She destroyed her Afghanistan passport when she received her United States passport. (Item 5.) Applicant traveled to Afghanistan to visit her family from about June 2009 to August 2009, and again from June 2011 through September 2011. (Item 6.)

She married a naturalized United States citizen in April 2005, and they have a two children, who are United States citizens. Applicant is employed as an interpreter by the DoD contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline B, Foreign Influence

The SOR lists six allegations, (1.a. through 1f.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. Applicant has admitted all of the SOR allegations in her RSOR (Item 4.)

1.a. Applicant's mother and father are citizens and residents of Afghanistan. Applicant speaks to her father about twice a month and her mother on a daily basis. (Item 6.) She wrote that they know she works for the United States Government, but they do not know what she does or with whom she works. (Item 4.)

1.b. Applicant's brother and four sisters are citizens and residents of Afghanistan. Applicant contacts them once a month. They know she works for the United States Government, but they do not know what she does or with whom she works. (Item 4.) All of Applicant's siblings live in the home with Applicant's parents. (Item 6.)

1.c. Applicant's father has been employed as a professor with the Afghanistan Ministry of Education since 1980.

1.d. Applicant's three brothers-in-law are citizens and residents of Afghanistan. Applicant has had no contact with them since she started working in her current position. (Item 4.)

1.e. Applicant's sent his family in Afghanistan approximately \$300 while collecting monetary assistance from a state in the United States. Applicant wrote that she sent the money to her mother because she was sick and need the money to see a doctor. She borrowed the money from her mother-in-law. (Item 4.)

1.f. Applicant maintains contact with friends who are Afghanistani citizens, but reside in the United States. Applicant wrote that she does not have a lot of contact with friends who are citizens of Afghanistan. She claims to only have one friend who resides in the United States, but Applicant does not share any information about her job with this friend or anybody else. (Item 4.)

Mitigation

Applicant submitted a letter from an LTC of the United States Army, dated November 14, 2013. He wrote that Applicant, "is the best and brightest interpreter I have ever worked with during my two years of service in Afghanistan. She is a dedicated, creative and intelligent professional. She inspires loyalty and respect from peers and superiors. Her experiences as a Female Engagement Team (FET) interpreter are great assets and skills that will be appreciated by any organization, anywhere." (Item A.)

Current Status of Afghanistan

Afghanistan has been an independent nation since August 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, and the Soviets withdrew in 1989. After the withdrawal a civil war continued, and in the mid 1990s the Taliban rose to power. The Taliban committed massive human rights violations and provided sanctuary to Osama Bin-Laden and Al Quaida. After the September 11, 2001 terrorist attacks the United States forces and a coalition commenced military operations in October 2001, and forced the Taliban out of power and a new democratic government was installed in 2004.

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly frequent, sophisticated, and destabilizing. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

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 useful 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 over-arching 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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 protect or 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 Executive Order 10865 provides that 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

AG ¶ 6 expresses the security concern regarding 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 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 describes conditions that could raise a security concern and may be disqualifying. The applicable conditions in this case include: 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.” This applies because Applicant’s family members all are citizens and residents of Afghanistan, a country of heightened risk, and her contact with her family members is on a regular basis, most significantly Applicant’s daily contact with her mother. Applicant also visited her family in Afghanistan for extended periods in 2009 and 2011.

I find 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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information” is also applicable in this case. Applicant clearly is still close to her family, especially her mother, as evidence by Applicant’s daily contact with her, the \$300 Applicant gave to her mother, and her trips to Afghanistan.

AG ¶ 8 provides conditions that could mitigate security concerns. Because of Applicant’s continuing relationship with her family members, who are citizens and residents of Afghanistan, including her daily contact with her mother, her continuing contact with her father and her siblings, and her extended trips to Afghanistan to visit her family in 2009 and 2011, I cannot find that 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,” is applicable to this Applicant. Finally, I do not find that any other mitigating factor is applicable to this case.

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 the facts and circumstances surrounding this case. Based on the reasons cited above as to why the disqualifying conditions apply under Guideline B, and why no mitigating conditions apply, and while considering the positive character letter submitted on Applicant's behalf, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the 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. through 1.f.:	Against Applicant

Conclusion

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

Martin H. Mogul
Administrative Judge