



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



In the matter of:)	
)	
)	ISCR Case No. 13-00610
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

03/19/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. Applicant is a naturalized U.S citizen originally from Afghanistan. Her relationships with her husband and son-in-law, who are both U.S. citizens, are not indicative of a foreign preference. Applicant’s relationship with her sister-in-law, a citizen and resident of Afghanistan is not a source of influence, vulnerability, or exploitation. Clearance is granted.

Statement of the Case

On September 6, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that the case be

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD 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 to this case. 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.

submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.² At the hearing convened on December 9, 2013, I admitted Government's Exhibits (GE) 1 through 3, without objection. Applicant did not submit any documents. I received the transcript (Tr.) on December 17, 2013.

Procedural Issues

Waiver of Notice Requirement

Applicant received less than 15 days written notice of the time and place of the hearing as required under Directive ¶ E.3.1.8. Applicant waived the notice requirement, electing to proceed with the hearing as scheduled.³

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan. Applicant did not object to the request, and it was granted. The written summary, along with its attachments, is appended to the record as Hearing Exhibit (HE) 1.⁴

Findings of Fact

Applicant, 59, has worked as a linguist for a federal contractor since February 2012. As part of her employment, Applicant completed a U.S. Army counter-intelligence (CI) interview in May 2012. During the interview, Applicant discussed the citizenship and employment status of her family members, her immigration to the United States, and the political activities of her husband. Based on the interview, the Army found no CI or foreign preference risk based on Applicant's relationships or with her husband's political activities. At the hearing, Applicant provided testimony consistent with that of the CI interview.⁵

Originally from Afghanistan, Applicant became a naturalized U.S. citizen in June 2003. Applicant's husband and their three oldest children are also naturalized U.S. citizens. At the time of her CI interview, Applicant listed her son-in-law as being a citizen of Afghanistan, residing in the United States. He became a naturalized U.S. citizen

² The letter from the Chief Administrative Judge regarding the Applicant's rights and obligations in a DOHA proceeding is appended to the record as Appellate Exhibit (AP E) I.

³ Tr. 6-8.

⁴ Tr. 17-19.

⁵ GE 1, 3.

sometime in 2012, after Applicant completed her CI interview. Applicant's youngest child and her three grandchildren are U.S. citizens by birth. All live in the United States.⁶

Applicant and her family fled Afghanistan for Pakistan in 1981 after the former Soviet Union invaded the country. Applicant's husband, then a journalist, was politically active, speaking against the invasion. From 1981 to 1988, Applicant's husband was a member of the National Afghan Islamic Front. He served as the leader of the Radio Voice of Afghan Mujahedeen from 1984 to 1987. During this time, Applicant's husband was jailed for his activities. Applicant and her family remained in Pakistan until 1988 when they immigrated to the United States as refugees. Since immigrating to the United States, Applicant's husband has remained active as a journalist and political pundit in the expatriate Afghan community, voicing opposition to the Taliban and al-Qaeda. He does not participate in any organized political groups. Applicant denies the SOR allegations that her family has received threats from Taliban and al-Qaeda supporters because of her husband's activities. In 2006, Applicant's husband held a security clearance while he worked as a linguist for a federal contractor. He was fired from the position for some unspecified misconduct. Applicant's husband now works as a truck driver.⁷

Applicant does not own any property or have any bank accounts outside the United States. In addition to immediate family, her mother and six siblings are also naturalized U.S. citizens. Three of her brothers have held security clearances, working as linguists for federal contractors. Only one of her brothers continues to work as a linguist. Currently, Applicant has one relative, a sister-in-law, who is a citizen and resident of Afghanistan. Applicant does not consider this a close relationship and has not had contact with her sister-in-law since 2007. The Army CI report did not find any risk associated with this relationship.⁸

Afghanistan

Afghanistan is located in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia on the north. It is a rugged and mountainous country, which has been fought over by powerful nations for centuries. It has about 18 million people. Afghanistan is presently an Islamic Republic that has had a turbulent political history, including an invasion by the Russians in 1979. After an Accord was reached in 1989 and Russia withdrew from the country, fighting continued among the various ethnic, clan, and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic government took power in 2004 after a popular election. Despite that election, terrorists and the Taliban continue to assert power and intimidation within the country. In May

⁶ Tr. 20-23, 29-31, 53-54; GE 1, 3; Answer.

⁷ Tr. 21, 39-47; GE 3.

⁸ Tr. 23-26, 36-39, 54-55; GE 3.

2012, the United States and Afghanistan signed the *Enduring Strategic Partnership Agreement between the Islamic Republic of Afghanistan and the United States of America*, memorializing a ten-year commitment from the United States to strengthen Afghanistan's sovereignty, stability, prosperity, and continue cooperation to defeat al-Qaida and its affiliates.⁹

The country's human rights record remains poor. Problems include: extrajudicial killings; widespread official impunity; official corruption; violence and societal discrimination against women. Violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence.¹⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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.

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 security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

⁹ HE 1.

¹⁰ HE 1.

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.

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

“[F]oreign contacts . . . may be a security concern if the individual has divided loyalties . . . , 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.”¹¹ The SOR identifies three of Applicant’s relationships that may indicate a foreign preference, specifically, Applicant’s relationship with her husband, her son-in-law, and her sister-in-law. Because Applicant’s son-in-law is now a naturalized U.S. citizen living in the United States, this relationship is no longer a security concern. However, Applicant’s relationship with husband and her sister-in-law requires further scrutiny.

Applicant’s sister-in-law is a citizen and resident of Afghanistan. A close relationship with a person who is a resident and citizen of a foreign country can be disqualifying if the contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion;¹² or if the relationship could create a potential conflict of interest between the applicant’s obligation to protect sensitive information or technology and her desire to help a foreign person.¹³ Although a heightened risk exists in this case given the perilous conditions inside Afghanistan, Applicant’s relationship with her sister-in-law is not likely a source of vulnerability or exploitation. There is no evidence that Applicant’s sister-in-law is associated with or dependent upon the Afghan government. As such, it is unlikely that Applicant will be put in the position of having to choose between the interests of her relative in Afghanistan and those of the United States.¹⁴ Furthermore, Applicant’s relationship with her sister-in-law is not particularly close as the two have not had contact in almost seven years.¹⁵

¹¹ AG ¶ 6.

¹² AG ¶ 7(a).

¹³ AG ¶ 7(b).

¹⁴ AG ¶ 8(a).

¹⁵ AG ¶ 8(c).

Applicant's relationship with her husband, a naturalized U.S. citizen, raises a security concern, despite his citizenship status, if their relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.¹⁶ The SOR alleges that Applicant's husband's political activism in the 1980s creates heightened risk. It does not. Applicant's husband political activities and associations in the 1980s are too remote in time and unrelated to the current political situation in Afghanistan to be relevant to a current heightened risk analysis. The SOR also alleges that Applicant's husband's current work as a journalist and political pundit opposing the Taliban creates a heightened risk because his activities have led to threats against Applicant's family by Taliban sympathizers. This allegation is not supported by the record. Applicant states that she is unaware of any threats made against her family. There is no information in the record to contradict her statements. Additionally, the Army CI assessment found no foreign preference or counter-intelligence risk associated with Applicant's husband's activities.

Based on the record, it is unlikely that Applicant will be put in a position of having to choose between the interests of her relatives and the United States. Applicant and her family entered the United States 26 years ago as refugees. She is firmly rooted in the United States by the presence of her husband, children, grandchildren, siblings, and mother. Viewed in totality, these factors lead me to the conclusion that Applicant can be expected to resolve any conflict of interest in favor of the United States. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant's does not have divided loyalties between the United States and Afghanistan. Based on the evidence, I conclude that Applicant has mitigated the foreign influence 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: FOR APPLICANT

Subparagraphs 1.a - 1.d: 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge

¹⁶ AG 7(d).