



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 13-00633
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)
Applicant for Security Clearance)

Appearances

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

April 10, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On September 17, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and E 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 October 17, 2013, and he requested that his case be decided on the written record in lieu of a hearing. (Item 4.) On December 18, 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 10 documentary exhibits. (Items 1-10.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 20, 2014. Applicant submitted timely 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 61 years old, and he was born in Afghanistan. He left Afghanistan and came to the United States in January 1977, and became a naturalized United States citizen on July 3, 1986. Applicant married his spouse in Afghanistan in March 1985, and she is now a naturalized United States citizen. Applicant and his wife have three children, who are United States citizens. Applicant's mother, two brothers, and four sisters are citizens and residents of the United States. He also has a brother, who is a citizen and resident of France, and a sister, who is a citizen and resident of Germany. Applicant's father and father-in-law are deceased. (Item 5.)

Applicant received a Bachelor's degree in 1973 from a university in Afghanistan. He then served in the Afghan army in 1973 as a Lieutenant to satisfy his military requirement. Applicant attended two different universities in the United States, the first from 1977 to 1984, and the second from 1979 to 1989. Applicant received a Master's degree and a Ph.D. in Science and Engineering in the United States. Applicant identified himself as the self-employed President/Owner/Professor of a university from 1977 to 2010. (Item 5.)

Applicant has been employed as an interpreter since August 2010, by a DoD contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline B, Foreign Influence

The SOR lists three allegations, (1.a. through 1c.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR.

1.a. The SOR states that Applicant is an acquaintance of the current President of Afghanistan, Hamid Karzai. Applicant denied this allegation in his RSOR. (Item 4.)

Applicant was interviewed by a United States Government investigator on August 10, 2012. During the interview, Applicant disclosed that he had met with President Karzai in March 2002, and presented to him a document concerning the reconstruction of Afghanistan. Applicant averred that he did not hear back from president Karzai after the meeting. (Item 6.)

On Applicant's e-Quip, submitted in August 2010, Applicant indicated that he has known President Karzai from July 1968 to the present and he has had one to two contacts a year. (Item 7.)

On a United States Government security screening document from an interview of August 30, 2010, Applicant listed that he had contact with President Karzai on only one occasion. (Item 8.)

1.b. The SOR states that Applicant's uncle is a citizen and resident of Afghanistan, and he serves as a Major General in the Afghan National Army. Applicant admitted this allegation in his RSOR. (Item 4.)

During the August 30, 2012 interview, Applicant claimed that he also met with his uncle in September 2002, at which time he presented to his uncle a plan to establish better United States/Afghanistan military cooperation. He also indicated that he did not hear back from his uncle after the meeting. (Item 6.)

On the 2010 e-Quip, Applicant reported that he has known his uncle from March 1952 to the present, with more than 15 contacts a year. (Item 7.)

On the United States Government security screening document from an interview of August 30, 2010, Applicant listed that he had three of four contacts per year with his uncle, who is a General in the Afghan National Army. (Item 8.)

1.c. The SOR states that Applicant's uncle's wife is a citizen and resident of Afghanistan. Applicant admitted this allegation in his RSOR. (Item 4.)

On the 2010 e-Quip, Applicant reported that he has known his aunt, from March 1970 to the present, with more than 15 contacts a year. (Item 7.)

On the United States Government security screening document, Applicant listed that he had six contacts per year with his aunt, who is an engineer. (Item 8.)

On Item 8, Applicant also stated that in September 2001, Applicant wrote a letter to president George W. Bush, in which he offered to help in the capture of Osama Bin Laden. He also wrote a letter at the same time to the United States Secretary of Defense pledging his support for the United States invasion of Afghanistan. (Item A.)

Guideline E- Personal Conduct

The SOR lists one allegation regarding Personal Conduct under Adjudicative Guideline E.

2.a. The SOR alleges that Applicant furnished incomplete, untruthful information on a Security Clearance Application (SCA) that he completed and certified on January 10, 2013. The question in **Section 19 - Foreign Contacts** asks, "Do you have, or have you had, close and/or continuing contact with a foreign national within the last seven years with whom you, your spouse, or cohabitant are bound by affection, influence, common interests, and/or obligation." Applicant answered, "No," to this question. The SOR alleges that Applicant deliberately failed to disclose his relationship and contacts with his uncle, his uncle's wife, and Afghan president Karzai, as alleged in subparagraphs 1.a. through 1.c., above.

Applicant denied this allegation in his RSOR. (Item 4.) He wrote that he came in contact with all three in 2002. The frequency of his contact was one time with President Karzai, only once with his aunt, and only once in the past 38 years with his uncle since leaving Afghanistan in 1975. The statements Applicant made in his RSOR regarding his contacts with his uncle and aunt are completely contradicted by the representations made by Applicant in Items 7 and 8.

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, until 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 uncle, who is a General in the Afghan Army, and his aunt are citizens and residents of Afghanistan, a country of heightened risk. Based on Applicant’s contradictory representations about his frequency of contact with them, Applicant’s relationship with his uncle and aunt cannot be determined and must be considered as close and continuing.

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.

Finally, AG ¶ 7(f) is applicable, “failure to report, when required, association with a foreign national.”

AG ¶ 8 provides conditions that could mitigate security concerns. Because of Applicant’s continuing relationship with his uncle, an Afghan general, and aunt, both of whom are citizens and residents of Afghanistan, 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. I also do not find that any other mitigating factor is applicable to this case.

Guideline E, Personal Conduct

With respect to Guideline E, I find that Applicant misrepresented his frequency of contact with the president of Afghanistan, and Applicant's uncle and aunt, all citizens and residents of Afghanistan. Regarding President Karzai, Applicant represented on some documents that he only met him one time, but on Item 7, Applicant wrote that he had contact with the president one or two times a year. His representations about his contacts with his uncle and aunt changed on each Government document that he completed, from only having contact with them once to having contact with them as frequently as 15 times a year. What is most damaging is that on the most recent document that he completed, the 2013 e-Quip, Applicant failed to identify any contacts with his uncle or aunt. Because of his lack of consistency, honesty and candor regarding this very significant information, I find that Applicant did intend to mislead the Government.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. If such an individual intentionally falsifies material facts, it is extremely difficult to conclude that he nevertheless possesses the judgment and honesty, necessary for an individual given a clearance.

In reviewing the disqualifying conditions under Guideline E, I conclude that because of Applicant's "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire" that ¶ 16(a) applies against Applicant. I find no mitigating conditions can be applied. I therefore, resolve Guideline E against Applicant.

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 Guidelines B and E, and why no mitigating conditions apply, 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 under the whole-person concept.

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.c.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.:	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