



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



In the matter of:)
)
) ISCR Case No. 13-00629
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Department Counsel
For Applicant: *Pro se*

03/10/2014

Decision

DAM, Shari, Administrative Judge:

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

Statement of the Case

On October 16, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (Item 4). On September 18, 2013, the Department of Defense (DoD) issued him a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 after September 1, 2006. The SOR detailed reasons why the DoD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him.

Applicant answered (Answer) the SOR on October 10, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written case on November 20, 2013. A complete copy of the File of Relevant Material (FORM), containing seven

Government Items (Items 1-7), was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on December 18, 2013, and returned it to the Defense Office of Hearings and Appeals (DOHA). In response to the FORM, he timely submitted documents that I marked as Applicant Exhibits (AE) A and B, and admitted into the record without objection from Department Counsel. DOHA assigned the case to me on January 16, 2014.

Procedural Ruling

Department Counsel requested that I take administrative notice (AN) of certain facts relating to Afghanistan (FORM). She provided nine supporting documents to show detail and context for those facts (Items I-IX). Applicant did not object to the request or documents, and Department Counsel's request was granted.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact

Applicant admitted the allegations contained in SOR ¶¶ 1.a through 1.h, with explanations. His admissions, including those made in an August 11, 2010 Counterintelligence Focused Security Screening Questionnaire and Interview, and in a November 1, 2012 Counterintelligence Focused Security Screening Questionnaire and Interview, are incorporated herein as findings of fact. (Answer; Items 3, 6.)

Applicant was born in Afghanistan in 1968 and is 45 years old. At age 14, he and his mother fled Afghanistan after the Russian invasion and went to Pakistan. Sometime in 1990 he purchased fraudulent U.S. travel documents. On August 10, 1990, he flew to the United States and upon entry requested political asylum. He was granted temporary residency while his request was processed. In November 1998 he was granted political asylum. In 2006 he obtained permanent residency. On May 3, 2012, he became a naturalized U.S. citizen. He stated that he would have become a citizen sooner but documents pertaining to his asylum request were lost, delaying receipt of permanent residency. (Item 6; AE A.)

After entering the United States, Applicant worked in the fast-food industry for a year and then as a taxi driver for a couple years. In May 1995 he moved to another state where he attended college and worked in automobile sales. He later started an Afghan restaurant and by 2003 employed ten people. He continued pursuing an

education and obtained a real estate license in January 2006. From then until July 2010 he worked as a real estate broker.

In August 2010 Applicant began a linguist position with the U.S. Army, and worked there until December 2011. He was then unemployed until October 2012 when he started another contract position with the Army, where he remains currently. He noted that he used his savings to live while unemployed for those months between jobs. According to budget documents, he had approximately \$115,000 in savings remaining in November 2012. (Item 6.) He asserted during his November 2012 interview that the United States is his country and he "vowed to protect" it. (Item 6.) He has several good friends who are U.S. citizens. His roommate is also a linguist for the U.S. Army. (Item 6.)

Applicant's parents were born in Afghanistan. His father died in 2011. He was a businessman and owned three properties with four brothers. When his father died, he bequeathed his portion of the real estate to Applicant's mother; however, to-date his uncles have not legally released ownership of the properties to his mother. Applicant estimated that the value of the three properties, co-owned by his father and uncles, totaled over \$1 million. He does not know what will happen to his mother's inheritance. (Items 3, 6.) He noted that any inheritance he may receive would be shared with his nine siblings, four uncles, and cousins. (AE A.)

Applicant's mother is a citizen and resident of Afghanistan. She previously resided in Pakistan, but returned to Afghanistan in May 2011. Since arriving in the United States, Applicant has sent his mother money for living expenses several times a year. He estimated that he sends her about \$5,000 per year. He stated in his November 2012 Interview that he contacted his mother weekly. (Item 6.) In his response to the FORM, he said he contacts her monthly now because of his work. (AE A.)

Applicant has eight brothers and one sister. Six brothers and his sister were born in Afghanistan. His sister is a resident and citizen of Afghanistan. Six brothers are citizens and residents of the United Kingdom. Two brothers were born in Pakistan and are citizens and residents of Afghanistan. One of them works as an engineer for the Afghan government and the other brother is a student. He contacts those two brothers quarterly. He also has a sister-in-law who is a citizen and resident of Afghanistan whom he contacts annually. (Items 6, 7.) It is not known from this record whether Applicant's family is aware of his work with the Army.

In December 2011 Applicant became engaged to a woman who is a citizen and resident of Afghanistan. He did not know her at the time of his engagement. In May 2012 he met her for the first time when he went to Afghanistan. From May through August 2012, he rented a house in Afghanistan where he stayed while visiting his family and becoming acquainted with his fiancée. They will marry when she is able to come to the United States. After meeting, he began sending her between \$200 and \$1,000 annually for support. He previously contacted her daily, but now contacts her monthly. He intends to sponsor her, his mother, and two brothers for immigration to the United

States in the future. (AE A.) Applicant did not submit any information about his future in-laws. The record does not indicate whether they are aware of his current work.

Applicant stated that as a linguist he has been embedded with the U.S. Army on numerous assignments and combat patrols. He has helped with the reconstruction of villages in various provinces and districts. (AE A.) He provided evidence concerning the quality of his professional performance and track record with respect to handling sensitive information and observation of security procedures. In December 2013 a special agent with another Defense agency wrote that Applicant is a “trusted member” of his team, who is “regularly around sensitive information.” (AE B(1).) He stated that Applicant is the only linguist on his team whom he trusts to handle complicated information. He has “full confidence in [Applicant] and believes him to be a truly dedicated American in support of Operation Enduring Freedom.” (*Id.*) Applicant’s staff sergeant wrote in May 2013 that Applicant “has done an outstanding job and has never had any issues.” (AE B(2).) Applicant’s commanding officer wrote in March 2013 that he had worked with Applicant since October 2012. He stated that Applicant “exercises diligence, patience and determination during each of his translations, and is well respected by the command group.” (AE B(3)). His commanding officer from April 2013 to August 2013 stated that Applicant “excelled as an interpreter” as a consequence of his knowledge of the local culture. (AE B(4).)

In November 2011 an Army captain wrote that Applicant “was one of the best men I have ever worked with.” (AE B(5).) He stated that Applicant was fluent in four languages and very valuable in the Army’s work in hostile environments. He noted that Applicant “is extremely fearless; he never hesitated in dangerous situations and made himself available to translate in the tensest scenarios we faced.”(*Id.*) Applicant submitted three additional letters of recommendation from 2011, praising his abilities and work. (AE B(6-8).) All authors of the letters are highly supportive of Applicant’s efforts and recommend him for any position of trust. (AE B.)

Afghanistan

I take administrative notice of the facts set forth in the Administrative Notice documents (FORM) concerning Afghanistan, which are incorporated herein by reference. Of particular significance are Afghanistan’s history of political unrest, and the presence of the Taliban and al-Qaeda terrorist organizations, which continue to assert power and intimidation within the country and bordering countries including Pakistan. Safety and security are key issues because these terrorist organizations target United States interests in Afghanistan by suicide operations, bombings, assassinations, car-jacking, assaults, hostage taking, and drug trafficking. At this time, the risk of terrorist activities remains extremely high. The country’s human rights record remains poor and 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. Few sections of Afghanistan are safe or immune from violence, and the government has difficulty enforcing the rule of law.

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 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for access to classified information seeks to enter 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination 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 explains the security concern pertaining to foreign influence as follows:

Foreign contacts and interest 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 sets out three conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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

(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.

The mere circumstance of close family ties with a family member living in Afghanistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

AG ¶ 7(a) requires the presence of family members (or business or professional associates, friends, or other persons), who are citizens and/or residents of a foreign nation, and substantial evidence of a heightened risk. Applicant's fiancée, mother, sister, and two brothers are all citizens and residents of Afghanistan. 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 or substantial assets in a foreign nation. Afghanistan is a country known to have significant terrorism problems, particularly against people with U.S. connections, and engages in human right abuses. These factors create a heightened risk. Applicant's brother's engineering position with the Afghan government also raises a heightened risk through those family ties. The evidence is sufficient to raise AG ¶ 7(a) with respect to Applicant's fiancée, mother, sister, and brothers. Since arriving in the United States Applicant has consistently sent financial aid to his mother, and more recently to his fiancée. That assistance also raises security concerns under AG ¶ 7(a).

Applicant's connections to his brother, an engineer for the Afghan government, creates an additional potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help his brother or other family members by providing that information. AG ¶ 7(b) applies.

AG ¶ 7(e) requires the presence of a substantial business, financial, or property interest in a foreign country, and evidence of a heightened risk associated with that foreign interest. At this time any such interest that Applicant may inherit as a consequence of his father's death appears to be speculative. His mother remains alive and has yet to receive monies owed to her from her husband's siblings. In the event of his mother's death, her property will be divided amongst him, his nine siblings, and other relatives. Although the estate may have a value over \$1 million, Applicant's potential share will be much less. It does not represent a "substantial business, financial, or property interest," at this time and any future ownership by Applicant is uncertain. AG ¶ 7(e) does not apply.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

(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.;

(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

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶¶ 8(a) and 8(c) cannot be applied with respect to Applicant's family members living in Afghanistan. Applicant has a strong emotional bond with his fiancée,

mother, sister, and two brothers, who are citizens and residents of Afghanistan, as demonstrated by his regular and ongoing contact with them since arriving in the United States. His financial support for his mother and fiancée further establishes his close relationship with them. Applicant's loyalty and close relationship to his family, particularly his mother and fiancée, in Afghanistan are positive character traits. However, for security clearance purposes, those strong relationships raise security concerns under this guideline. The fact that one brother works for the Afghan government further negates the application of these mitigating conditions as to that brother.

AG ¶ 8(b) has some application. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established some longstanding connections to the United States. He has been in the United States since 1990 and is now a citizen. He has attended some college. He has worked hard and successfully since arriving. He owned and operated a business for a couple years and employed ten people. He became a licensed real estate broker in 2006. He provided excellent service to the U.S. Army in Afghanistan from August 2010 until December 2011. He has subsequently been there since November 2012, earning additional commendations and praise from his supervisors. He strongly asserted his loyalty to the United States, as did the authors of letters of recommendation.

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 relevant 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.

According to 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis.

There are factors that weigh in favor of granting Applicant a security clearance. He established some strong connections to the United States, including residency here since 1990. He has, however, only been a U.S. citizen since 2012. He has attended

college here, and, owned and managed businesses over the years. He has friends who are U.S. citizens. His roommate is a linguist for the U.S. Army. He has financial accounts in the United States.

Applicant has worked with the U.S. Army as a linguist in Afghanistan from August 2010 until December 2011, and since November 2012. In total, he has successfully worked with the Army for more than 30 months, including a period of time during which he was not a U.S. citizen, according to this record. He submitted independent evidence from his Army command establishing that he has demonstrated ongoing compliance with security procedures during these positions, and that he has made significant contributions to the Army's mission under hostile circumstances. His commanding officers have written about his talents and dedication in difficult and tense situations. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case." See ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). In this case that evidence gives some credibility to Applicant's assertion that he can be relied upon to resist a foreign power's attempts at coercion.

However, there are foreign influence security concerns arising from Applicant's history of connections to Afghanistan that weigh against granting him a security clearance. Applicant was born in Afghanistan and spent his early years there. His mother, sister, two brothers, and fiancée are citizens and residents of Afghanistan. He has maintained contact with his immediate family since 1990 and with his fiancée since 2012. He spent the summer months of 2012 in Afghanistan to visit his family and become acquainted with his fiancée. One of his brothers is an engineer for the Afghan government, but there is no information indicating for what agency he works or the position he holds. There is little information about his other brother. In December 2011 Applicant became engaged to a woman who is a citizen and resident of Afghanistan. He did not submit any information about her or her family's background or employment, or whether they have knowledge of his position. He sends financial aid to his mother and fiancée. These factors demonstrate Applicant's deep and ongoing attachments to Afghanistan. Additionally, his current work with the U.S. Army creates a greater risk of potential coercion, should terrorists learn of his work and family members residing in Afghanistan, including a brother who works for the government. There is no evidence that he has any family living in the United States.

At this time, the mitigating evidence under the whole-person concept and the adjudicative guidelines is not sufficient to warrant access to classified information. The quality of Applicant's performance with the Army makes the outcome of this case a close call. However, without more details about Applicant's fiancée, her family, and his brother's position with the Afghan government, the record leaves me with unanswered questions as to Applicant's eligibility for a security clearance. Given that, this Decision must be resolved in favor of national security. Applicant has not sufficiently carried his burden to mitigate the foreign influence 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.g:	Against Applicant
Subparagraph 1.h:	For 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.

Shari Dam
Administrative Judge