DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 13-00639
	)	
Applicant for Security Clearance	)	

Appearances

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

05/23/2014

_____

Decision

_____

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline C for foreign preference. He mitigated security concerns for foreign influence under Guidelines B. Eligibility for access to classified information is denied.

Statement of the Case

On September 18, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment as a linguist with a defense contractor. (Item 3) Applicant was interviewed by counterintelligence agents (Item 4), and by agents of the Office of Personnel Management (OPM) (Item 5). The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On August 15, 2013, the DOD issued to Applicant a Statement of Reasons (SOR) detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. (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 30, 2013. He admitted all allegations under both guidelines. Applicant requested a decision on the written record. (Item 2) Department Counsel submitted the Government's written case on January 30, 2014. Applicant received a complete file of relevant material (FORM) on February 4, 2014, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided additional information on March 6, 2014. The case was assigned to me on May 15, 2014.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 41-years-old. He was born in Afghanistan and came to the United States with his family as a refugee in 1989. His father worked for an American company in Afghanistan and was imprisoned by the Soviet Union when they invaded Afghanistan. When his father was released from prison, he moved his family to Pakistan and then to the United States as refugees. Applicant did not complete high school in Afghanistan because of the need to leave the country, and did not continue his education after arriving in the United States. He became a United States citizen in 2002. He has worked as a linguist in Afghanistan for a defense contractor since September 2012.

Applicant married a Canadian citizen in July 2004. His wife was born in Afghanistan but now is a Canadian citizen residing in Canada. He moved to Canada in 2006 and received permanent resident status in 2009. His daughter was born in Canada in 2007. She lives in Canada with her parents and is a dual United States and Canadian citizen. Applicant's father, mother, and siblings are all citizens and residents of the United States. (e-QIP, Item 3; Security Interview, item 5)

The SOR alleges, and Applicant admits, that he has resided and worked in Canada since 2006 (SOR 1.a); that after becoming a United States citizen in 2002, he applied for permanent resident status in Canada in 2007 and has been a Canadian permanent resident since 2009 (SOR 1.b); that he has received medical benefits from Canada since 2006 (SOR 1.c); and child tax benefits from Canada since 2007 (SOR 1.d). The SOR further alleges, and Applicant admits, that his wife is a citizen and resident of Canada (SOR 2.a); that his daughter is a dual citizen of the United States and Canada (SOR 2.b); that his mother-in-law is a citizen and resident of Canada (SOR 2.c); that his father-in-law is a citizen of Afghanistan residing in Canada (SOR 2.d); and his sister-in-law is a citizen and resident of Canada (SOR 2.e).

Applicant worked at various jobs in the United States after arriving in November 1989. In January 1999, he became part-owner of a restaurant. He worked in the restaurant until he sold his part of the business in March 2006. The business did not pay

all of the state taxes owed and a substantial lien was placed against Applicant's assets. Applicant also was a co-owner of a house near the restaurant in the United States. Applicant sold his share of the ownership of the house and used the profits to settle and pay the tax debt. The tax debt has been resolved. (Item 4 at 10-11; and Item 5 at 8)

Applicant married in August 2004 and sponsored his wife for entry into the United States. She applied for permanent resident status but was initially denied the status because she had moved back to Canada during the process. She was granted U.S. permanent resident status in late 2007. Applicant moved to Canada in March 2006 because his wife was working and attending school in Canada. She is now attending law school in Canada. The cost of college and law school is less expensive in Canada than in the United States. Applicant's wife, her mother, sister, and brother are residents and citizens of Canada. Her father is an Afghan citizen but resides in Canada. Applicant sees his wife's family weekly. Applicant's wife and mother-in-law own a house in Canada where Applicant and his family resided. The house is worth approximately $320,000. Applicant lives in the house but is not included on the deed or mortgage. Applicant lived in Canada but was unemployed from March 2006 until August 2009. He did not receive unemployment compensation but was supported by his wife. His wife worked or attended school and he took care of their daughter. In 2009, he started work at a restaurant in Canada and worked there until September 2012 when he went to work as a linguist for the defense contractor. Applicant, his wife, and child receive free medical benefits from the Canadian government valued at approximately $430 monthly. Applicant and his wife also qualified for and received child tax benefits from the Canadian government. Applicant has a bank account in Canada with a balance in 2012 of $30. He opened the account to cash checks from his employment with the Canadian restaurant (Item 4 at 8 and 10, and Item 5)

Applicant does not know what documents he used to travel to the United States in 1989 since he was only a teenager traveling as a refugee with his family. He did not believe he had a passport. He received a United States passport when he became a citizen in 2002. He renewed the passport in 2012 and it expires in 2022. Applicant applied for Canadian permanent resident status in 2007, because his wife was attending school. His request was granted in 2009. His permanent resident status card expires on October 16, 2014. Applicant initially did not understand that he could apply for Canadian citizenship and become a dual United States and Canadian citizen. When advised that he qualified for Canadian citizenship, he responded to counterintelligence agents that he would apply for Canadian citizenship. A Canadian permanent resident is eligible for Canadian citizenship if he or she has resided in Canada for at least three years (1,095 days) in the last four years. Applicant does return occasionally to the United States, but he resides full time in Canada. He has resided in Canada since 2006, and been a permanent resident since 2009. Since becoming a United States citizen in 2002, Applicant has spent over two-thirds of his time in Canada. He meets the qualifications for Canadian citizenship. (Item 4 at 4; and Item 6)

In his response to the FORM, Applicant stated that he moved to Canada and established residency there because his wife was a Canadian citizen and she is

attending law school in Canada. He is still in Canada because the cost of law school in Canada is less expensive than attending law school in the United States. He stated he intends to move back to the United States when his wife completes law school in late 2014. He further noted that his wife has permanent resident status in the United States and his daughter is a dual Canadian and United States citizen. He stated he did not move to Canada to avoid paying the business taxes owed, and that he files United States income tax returns every year. He reiterated that the business tax debt he owed has been paid and the lien released. (Response to FORM, dated March 6, 2014)

The United States and Canada share borders, and their bilateral relationship are among the closest and most extensive in the world. There is a high volume of trade and people-to-people contact between the countries. The countries have the most comprehensive trading relationship which supports millions of jobs in each country. Canada is the single largest supplier of energy to the United States, and they share a cooperative electric grid network. The countries work together on both a federal and local level. The defense arrangements between them are more extensive than with any other country. They share North Atlantic Treaty Organization (NATO) mutual security commitments, and the military forces cooperate on continental defense. There are joint law enforcement and border clearance programs. There is extensive cooperation on environmental and water issues. The countries have a common cooperative goal of fighting terrorism. There are no reported human rights violations in Canada, and Canada is not known to target U. S. citizens to obtain protected information.

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 for 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 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

Guideline C, Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9) The principal goal of the foreign preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is granted. It is not a measure of Applicant's loyalty to the United States.

Applicant was born in Afghanistan but came to the United States as a refugee when a teenager in 1989. He became a citizen of the United States in 2002. In 2004, he married a Canadian citizen and moved with her to Canada in 2006 so she could attend school. He has lived in Canada since 2006. His daughter was born in Canada in 2007. He applied for permanent resident status in Canada in 2007, and it was granted in 2009. He has received monthly health benefits from Canada and enjoys a child tax benefit provided by the Canadian government. Applicant meets the requirements for Canadian citizenship and has expressed his intent to become a Canadian citizen. Applicant does not possess a Canadian passport, but he does hold a Canadian permanent resident card. These facts raise Foreign Preference Disqualifying Conditions AG ¶ 10(a) (exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; (3) accepting educational, medical, retirement, social welfare, or other such benefits form a foreign country; and (4) residence in a foreign country to meet citizen requirements).

I considered Foreign Preference Mitigating Conditions AG ¶ 11(a) (dual citizenship is based solely on parent's citizenship or birth in a foreign country); AG ¶

11(b) (the individual has expressed a willingness to renounce dual citizenship); AG ¶ 11(c) (exercise of the rights, privileges, or obligation of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor); and AG ¶ 11(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated). These mitigating conditions do not apply. Applicant became a U.S. citizen in 2002, and purposely sought permanent resident status in Canada in 2007. He worked in Canada as a permanent resident, and received medical and tax benefits from Canada because of his status as a permanent resident. Applicant thereby exercised the privilege of Canadian citizenship. Applicant stated he will move back to the United States in the future when his wife completes school. A stated future intent does not negate the present facts that he has shown a preference for a foreign country by becoming a permanent resident of the country and accepting benefits from the country. Applicant has not indicated a willingness to renounce his permanent resident status, but instead indicated his intent to seek Canadian citizenship since he is eligible. His actions show a clear preference for Canada. Even though Canada and the United States are very close and friendly nations, he may make decisions because of his preference for Canada that are harmful to the interests of the United States. Applicant has not mitigated security concerns for foreign preference.

Guideline B: 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. 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 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)

Applicant's in-laws, except for his father-in-law, have been long time citizens and residents of Canada. His father-in-law is an Afghan citizen but has been a long-term resident in Canada. His wife is a Canadian resident and citizen, but has permanent resident status in the United States. His daughter is a dual citizen of the United States and Canada, and resides with her parents in Canada. His wife attends school in Canada which has a lower tuition rate than United States schools.

I do not find any Foreign Influence Disqualifying Conditions raised by the fact his wife, daughter, and in-laws as citizens and residents of Canada. I considered 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), and 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). I also considered Applicant's

bank account in Canada in regard to AG ¶ 7(e) (a substantial business, financial, or property interest in a foreign country, or in foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation).

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern 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 economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant is at risk of coercion, persuasion, or duress.

Applicant does not have a financial interest in the house he lives in with his family and mother-in-law. As noted, Canada is one of the closest, if not the closest, ally of the United States. The United States shares many programs with Canada and there is mutual cooperation on terrorism and defense. The countries are mutually supporting, so there is no heightened risk of foreign influence or exploitation caused by Applicant's family members that are residents and/or citizens of Canada.

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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

Applicant's in-laws in Canada do not create a heightened risk of foreign influence leading to vulnerability, pressure, or coercion by Canada against the United States. However, Applicant's actions in seeking and receiving permanent resident status in Canada after becoming a U.S. citizen, and receiving benefits from Canada based on this status, shows a preference for Canada. While access to classified information is not based on a finding of loyalty in the United States, Applicant showed a divided loyalty to Canada and the United States. These facts leave me with questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated his foreign preference for Canada. He has mitigating potential security concerns arising from his contacts with family in Canada. Because Applicant has not mitigated the security concerns arising from foreign preference, access to classified information is denied.

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 C:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a – 2.e:	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.

THOMAS M. CREAN
Administrative Judge