



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



In the matter of:)	
)	
)	ISCR Case No. 13-00643
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

01/14/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 11, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 16, 2013, detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on October 3, 2013. He submitted a notarized, written response to the SOR allegations dated October 13, 2013, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on November 4, 2013. Applicant received the FORM on November 18, 2013. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated November 23, 2013, which DOHA received on December 2, 2013. DOHA assigned this case to me on January 6, 2014. The Government submitted five exhibits, which have been marked as Items 1-5 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to Afghanistan. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1, I-IX. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and they are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.c of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.b of the SOR with explanation.¹ His explanation reflects that one-half of the allegation is denied and one-half of the allegation is admitted. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 57 years old, works as a linguist for a DOD contractor. Applicant began his current employment in November 2010. He has been deployed to Afghanistan to work as a linguist. He worked in dangerous areas of Afghanistan during his deployments between 2010 and 2013. Applicant has never served in a military. Prior

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

to working as a linguist, Applicant worked in the computer industry for many years. He was laid off from his last computer position in 2009, when the company downsized.²

Applicant was born and raised in Afghanistan. In 1981, Russia invaded Afghanistan. Shortly thereafter, Applicant fled his homeland to Pakistan, as he feared conscription into either the Russian or Afghan army to fight in the war between Russia and Afghanistan. While living in Pakistan, Applicant applied for refugee status in Europe or the United States. Seven months later, the United States granted him refugee status and issued him an entry visa. Applicant immigrated into the United States in September 1981, and he became a U.S. citizen in 1993. He holds a U.S. passport, which he uses for foreign travel.³

Applicant and his wife married in the United States in 1988. His wife was born in Afghanistan, and she is a naturalized United States citizen. They have two sons, ages 24 and 14, and a 22-year-old daughter, who were born and raised in the United States. Applicant's father is a citizen and resident of Afghanistan. His mother is a naturalized citizen and resident of the United States. His four brothers and two sisters were born in Afghanistan. All are residents of the United States, and with the exception of one sister, all are naturalized citizens of the United States. The non-citizen sister is still a citizen of Afghanistan. His mother-in-law is a citizen of Afghanistan, who is a resident of the United States with alien registration number. His father-in-law died in 2003.⁴

Applicant's father retired. His father has a fruit farm in Afghanistan, and he does not have any political activities or connections. Applicant and his family talk with his father twice a year by telephone. Applicant last spoke with his father in April 2013. He does not have any other communication with his father. There is no evidence of any other contacts with extended family or friends in Afghanistan. Applicant does not own property in Afghanistan. He does not have bank accounts or other assets in Afghanistan. Since his arrival in the United States in 1981, he returned to visit Afghanistan once in 2004. He has worked in Afghanistan for the last three years on behalf of the United States, but he has no desire to live in Afghanistan.⁵

Applicant's sister who is still a citizen of Afghanistan lives with Applicant's mother and a brother in the United States. She does not work outside the house. Applicant's mother-in-law lives with Applicant and his family in the United States. She does not work outside the home. Applicant has not explained why they have not obtained U.S. citizenship.⁶

²Item 4; Item 5.

³Item 5.

⁴Item 4; Item 5.

⁵Item 3; AE A.

⁶Item 4; Item 5.

Afghanistan

I take administrative notice of the following adjudicative facts. Afghanistan is an Islamic Republic and emerging democracy. With the support of the United States and other nations, its new government endeavors to build a new system of government and to rebuild the country's infrastructure. Its Army and police force are well trained. It continues to face significant challenges from the insurgency and terrorist organizations supported by the ousted Taliban and Al Qa'ida. Security and violence remain a serious issue. The government is not complacent about the terrorist threat, the insurgency, or security issues; rather it actively seeks to eliminate all with the assistance of the United States and NATO. The new government is working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community, has signed a "Good Neighbor" declaration with six nations bordering it, and promotes regional cooperation. The United States supports the emergence of a broad-based government in Afghanistan and has made a long-term commitment to help Afghanistan rebuild itself. Sometime ago, the leaders of both countries concluded a strategic partnership agreement committing to a long-term relationship between both countries, which was signed on May 2, 2012. Despite its differences with the United States, Afghanistan continues to seek U.S. support as it moves forward towards democracy and stability. None of the documents offered in support of the request for administrative notice indicate whether Afghanistan is an active collector of intelligence information.⁷

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 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 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

⁷HE 1.

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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An 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 an 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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

(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.

Applicant's wife, three children, four brothers, mother, and one sister are citizens and residents of the United States. Thus, no security concern is raised by these family members. Applicant's mother-in-law is a permanent U.S. resident, who lives with him. His non-citizen sister is also a permanent U.S. resident who lives with his mother and a brother in the United States. There is no evidence that they travel to Afghanistan. Neither his sister nor his mother-in-law work outside the home. Applicant's father is a citizen and resident of Afghanistan. He is Applicant's only relative in Afghanistan. Applicant and his immediate family members talk by telephone with his father twice a year. Applicant maintains a normal familial relationship with his father in Afghanistan. His family relationship with his father is not *per se* a reason to deny Applicant a security clearance, but his contacts with his father must be considered in deciding whether to grant Applicant a clearance. The Government must establish that this family relationship creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his father who may be threatened by terrorists.

In determining if such a heightened risk exists, I must look at Applicant's relationships and contacts with his father, as well as the activities of the Government of Afghanistan and terrorist organizations within Afghanistan. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his father in Afghanistan raises a heightened risk and a security concern because of the activities of terrorists organizations, particularly the Taliban. The evidence of record fails to show that the Afghan Government targets U.S. citizens in the United States or in Afghanistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Afghan Government will seek classified information is minimal. The same cannot be said for terrorist organizations.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Afghanistan cause security concerns, I considered that Afghanistan and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the Afghan Government targets U.S. citizens for protected information, but the terrorist threat is real. The human rights issues continue to be a concern. While none of these

considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his father in Afghanistan. Applicant's contacts with his father raise a heightened risk under AG ¶¶ 7(a) and 7(b).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and the following are potentially applicable:

(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.; and

(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.

Applicant has a normal relationship with his father. He last spoke with his father in April 2013. His communications with his father in Afghanistan are limited and create little likelihood for foreign influence or exploitation. His father is retired. He does not work for the Afghan government, nor does he have any contact with Afghan government officials. It is unlikely that the Government of Afghanistan would target his father to pressure Applicant for classified information, and thus, Applicant would not be placed in a position of having to choose between the interests of Afghanistan and the interests of the United States. Applicant has lived and worked in the United States since his arrival in 1981. He has built a solid life for himself and his family in the United States. He has no desire to return to live in Afghanistan. For more than 30 years, Applicant has lived and worked in the United States. He married a U.S. citizen and raised his children in the United States. Except for his father, his family lives near him in the United States. He has put his life at risk while working as a linguist in dangerous areas of Afghanistan. Given his father, his only relative in Afghanistan, is retired and now operates a small fruit farm, it is unlikely that Applicant will be placed in a position to chose between the interests of a foreign group, individual, organization, or government and the interests of the United States. Outside of his father, his ties to Afghanistan are nonexistent as Applicant does not own property, bank accounts, or other assets in Afghanistan. He does not receive any benefits from Afghanistan. His contacts in Afghanistan do not show that he would chose the interests of Afghanistan over the interests of the United States. In reviewing all the evidence of record, there is little likelihood that Applicant's father in Afghanistan are a security risk. Applicant has mitigated the security concerns about his father in Afghanistan under AG ¶¶ 8(a) and 8(b).

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 an applicant's conduct and all 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.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born and raised in Afghanistan. As a young man, he fled Afghanistan to avoid conscription into either the Russian or Afghanistan army to fight in their war. The United States granted him refugee status in 1981. He immigrated to the United States in 1981 and has lived in the United States for the last 32 years. He met and married his wife since arriving in the United States. His children were born and raised in the United States. Except for one sister and his mother-in-law, his family members living in the United States and he are now citizens of the United States. All these family members are residents of the United States. His father is his only family member who continues to live in Afghanistan. He is retired and now operates a small fruit farm. Applicant talks with him twice a year. His father is not involved in Afghan politics. Rather, he lives quietly. There is little likelihood that his father will be a target for terrorists. Applicant does not have any other contacts with Afghanistan nor does he own property or hold assets in Afghanistan.

