



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



In the matter of:)	
)	
)	ISCR Case No. 13-00978
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

04/09/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence; and Guideline C, foreign preference. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On September 30, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence; and Guideline C, foreign preference. DOD acted 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 on September 1, 2006.

Applicant answered the SOR on November 9, 2013, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on December 27, 2013.¹ The FORM was mailed to Applicant and he received it on February 3, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted several documents, which I marked as Items 11-14 and included in the record. The case was assigned to me on March 13, 2014.

Procedural Rulings

Administrative Notice

Department Counsel requested that I take administrative notice of facts concerning the country of Afghanistan.² Department Counsel provided supporting documents that verify, detail, and provide context for the facts in the Administrative Notice request. See the Afghanistan section of the Findings of Fact, *infra*, for the material facts from Department Counsel's submissions on this country.

Administrative or official notice is the appropriate type of notice used for administrative proceedings.³ Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. I granted Department Counsel's request to take administrative notice.⁴

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations stated in ¶¶ 1.a through 1.g, but denied the allegation stated in ¶ 2.a. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 29 years old. He was born in Afghanistan in 1984. He was married in 2004. From 2004 to 2008, he served as an in-country translator to U.S. forces in Afghanistan. He came to the United States in February 2008 with his wife and two daughters. In 2008, he chose to immigrate to the United States because of the opportunities, freedom, and education that it offered. Since moving to the United States, he has had two sons, born as U.S. citizens. Applicant became a naturalized U.S. citizen

¹ The FORM included as evidence Items 1-10.

² FORM at 3-6.

³ 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)).

⁴ See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

in March 2013. Between 2008 and 2012, he has returned to Afghanistan on several occasions as a deployed translator/cultural specialist working for government contractors in support of U.S. forces there. In April 2013, he formally renounced his Afghanistan citizenship. Later, in November 2013, he voluntarily surrendered his Afghanistan passport to his security officer, who oversaw its destruction. His wife and two daughters reside with him in the United States and are currently permanent resident aliens (his wife has applied for citizenship). He recently purchased a home in the United States valued at over \$400,000.⁵

Applicant has the following relatives who are residents and/or citizens of Afghanistan:

1. His wife and two daughters (ages nine and six), as stated above, are citizens of Afghanistan, but permanent residents in the United States. Applicant intends to apply for citizenship for his daughters now that he is back in this country from his deployments. His wife and family have no intention of returning to Afghanistan.⁶

2. His mother, brother, and sister. His mother has no affiliation with the Afghanistan government. His brother has no affiliation with the Afghanistan government. His sister is a high school student and has no affiliation with the government. He has telephone contact with all these relatives once every five or six months.⁷

3. His father-in-law and mother-in-law. His father-in-law works with the Afghanistan Ministry of Justice. His mother-in-law is a housewife. Both want to immigrate to the United States and are waiting for their daughter to obtain U.S. citizenship so she can sponsor them. He has weekly contact with his father-in-law and his mother-in-law.⁸

4. His three step-brothers and three step-sisters (also described by him in the documents as half brothers and sisters). In his FORM response (Item 11), he stated that he only met them once at his father's funeral in 1997. He has not been in contact with them since then and does not know where they reside. He indicated in a linguist screening document that his last contact with any of them was in 2000 (Item 6).⁹

5. His step-mother. He has never met her and does not know what her circumstances are at the present time.¹⁰

⁵ Items 3, 4, 5, 11, 13.

⁶ Items 3, 4, 11.

⁷ Items 3, 6, 11.

⁸ Items 3, 6, 7, 11.

⁹ Items 6, 9.

¹⁰ Items 3, 6, 11.

6. His three brothers-in-law and two sisters-in-law. Two of his brothers-in-law have been employed by U.S. forces as linguists and both are currently seeking visas to enter the United States. The other brother-in-law is a student. One sister-in-law is a student and the other is a housewife. He has weekly contact with all except one sister-in-law with whom he has contact once a year.¹¹

Applicant owns an apartment in Kabul, Afghanistan. There is a discrepancy in the evidence concerning the value of the apartment. He stated in a screening questionnaire that the value was about \$40,000 (Item 5). In his SOR answer (Item 3), he stated the apartment was valued at \$110,000. He stated in his FORM response that this property is under a sales contract and pending a final sale.¹²

Applicant is supported in his effort to gain a security clearance by the command he supported as a linguist. He was personally sought out by the commanding general (CG) of the command to work as a linguist, based upon the CG's previous personal experience with Applicant.¹³

Afghanistan

Formerly under the control of the United Kingdom, Afghanistan received independence in August 1919. It is a rugged and mountainous country in Southwestern Asia, approximately the size of Texas, and has common borders with Pakistan on the east and the south, Iran on the west, and Russia on the north. In 2009, the population was about 28 million people. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979, occupation by the Soviet Union until 1989, and civil war between the occupiers and home-grown freedom fighters, known as Mujahidin. Anarchy ensued, and fighting continued among the various ethnic, clan, and religious warlords and their respective militias even after the Soviet Union withdrew from the country. By the mid-1990s, the Taliban rose to power and controlled significant portions of the country, imposing repressive policies and sharia law, guiding all aspects of Muslim life. Afghanistan became a sanctuary for terrorist groups.

After the September 11, 2001 terrorist attacks in the United States, U.S. demands that Afghanistan expel Osama Bin-Laden and his followers were rejected by the Taliban. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power. Following a few years of governance by an interim government, a democratic presidential election took place in October 2004, and a new democratic government took power. Despite the election, many daunting challenges remained, largely because terrorists, including al-Qa'ida and the Taliban,

¹¹ Items 3, 6, 11.

¹² Items 3, 5, 11.

¹³ Items 11-12.

continue to assert power and intimidation within the country. Terrorists continue to target United States and Afghan interests through suicide bombings, assassinations, and hostage taking.

Afghanistan's human rights record remains poor, for there are continuing extrajudicial killings; torture and other abuse; widespread official corruption with impunity; ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; judicial corruption; violations of privacy rights; violence and societal discrimination against women; sexual abuse of children; trafficking in persons; and restrictions on freedoms of religion, the press, assembly, and movement.

The Taliban-led insurgency in Afghanistan has diminished in some areas, but remains resilient and capable of challenging U.S. and international goals. Security gains are especially fragile in areas where International Security Assistance Forces (ISAF) have been concentrated since 2010 and are now transitioning the security lead to Afghan National Security Forces (ANSF). The ANSF will require international assistance through 2014 and beyond.

In May 2012, the United States and Afghanistan signed the Enduring Strategic Partnership Agreement (SPA). This ten-year agreement demonstrates the United States' commitment to strengthen Afghanistan's sovereignty, stability, and prosperity and continued cooperation to defeat al-Qa'ida and its affiliates.¹⁴

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

¹⁴ See FORM, p. 6 (references I-VI).

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, and 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 explains the security concern about “foreign contacts and interests” stating:

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 indicates 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;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; 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 possession 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.

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's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship of Afghanistan with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Afghanistan do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Afghanistan who might be coerced by terrorists or other governmental entities.

Guideline B 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."¹⁵ Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in

¹⁵ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives or terrorists from Afghanistan seek or have sought classified or economic information from or through Applicant, or his relatives living in Afghanistan, it is not possible to rule out such a possibility in the future. As demonstrated by his regular contacts with his family, he continues to feel an obligation to them and affection for them. Applicant's concern for his relatives is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation.

AG ¶¶ 7(a) and 7(b) apply because of Applicant's relationships with his relatives who are living in Afghanistan. Applicant communicates with these relatives on a regular basis. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Applicant has not attempted to rebut this presumption. Given Afghanistan's fragile security situation, Applicant's relationships with his relatives living in that country are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." AG ¶¶ 7(c) and 7(d) apply because Applicant resides with his wife and daughters and because he owns a property interest in Afghanistan.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns:

(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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) does not apply. Applicant's current linguistics position could cause him to be placed in a position to choose between the interests of his relatives and those of the United States. AG ¶¶ 8(c) has limited applicability concerning his step-mother and step-siblings because of the limited contact he had with them.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He moved his family to the United States where his two sons were born, and his wife and children are seeking U.S. citizenship. Additionally, he volunteered to go into harm's way to serve as a linguist for U.S. forces in Afghanistan on multiple occasions since 2004. In performing his linguist duties, he earned the admiration and respect of the CG with whom he served, to the extent that he was personally requested by the CG to serve on his staff. The evidence supports that Applicant has longstanding loyalties toward the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

The value of Applicant's property in Afghanistan does not rise to the level of creating a conflict when compared to the assets and life that he has established in the United States. AG ¶ 8(f) applies.

Guideline C, Foreign Preference

AG ¶ 9 expresses the foreign preference security concern:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(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; (2) military service or a willingness to bear arms for a foreign country; . . . (7) voting in a foreign election.

Applicant was a citizen of Afghanistan who possessed a passport from that country. In April 2013, he formally renounced his Afghanistan citizenship by sending a letter to the embassy. He also surrendered his Afghanistan passport to his security officer in April 2013. The passport was destroyed in September 2013. Based upon these actions, I find the above disqualifying condition does not apply.

However, if The DOHA Appeal Board determines that a disqualifying condition applies, I also considered all the mitigating conditions under AG ¶ 11 and determined the following are potentially applicable under this guideline:

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

As discussed above, Applicant formally renounced his citizenship and his foreign passport was destroyed. I find mitigating conditions AG ¶¶ 11(b) and 11(e) apply.

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. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance at this time. I considered the ties he established in this country and his service as a linguist in a hostile environment, thereby demonstrating his longstanding loyalty to this country. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B, foreign influence, and Guideline C, foreign preference.

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: Subparagraphs 1.a – 1.g:	FOR APPLICANT For Applicant
Paragraph 2, Guideline C: Subparagraph 2.a:	FOR APPLICANT 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.

Robert E. Coacher
Administrative Judge