



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



In the matter of:)
)
) ISCR Case No. 13-01022
)
Applicant for Security Clearance)

Appearances

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

05/15/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On November 6, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B, foreign influence and F, financial considerations. 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on January 22, 2014. He elected to have his case decided on the written record. On March 25, 2014, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on April 21, 2014. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information. The case was assigned to me on May 12, 2014.

Request for Administrative Notice

Department Counsel submitted a written request, as part of the FORM, that I take administrative notice of certain facts about Afghanistan and Iran. The documents are attached to the record. Applicant did not object, and I have taken administrative notice of the facts contained in the record. The facts are summarized in the Findings of Fact below.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e. He denied the allegations in SOR ¶¶ 2.a through 2.j. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. He was born in Afghanistan. He attended a university in Afghanistan from 1986 to 1988, but did not earn a degree. He became a naturalized citizen of the United States in March 2010. He has been employed with a defense contractor since October 2010.

Applicant completed his Electronic Questionnaire for Investigation Processing (e-QIP) in October 2010. Applicant disclosed that his parents and a sister are citizens of Afghanistan and reside in Iran. They immigrated there in 1989 due to the Soviet invasion of Afghanistan. They are relatively disconnected from Iranian society and have no connections with the Iranian government or its organizations. He disclosed that he has two brothers and a sister who are citizens of Afghanistan and reside in Canada. He has another sister who is a citizen of Afghanistan and resides in Finland. His mother-in-law and father-in-law are naturalized citizens of the United States.¹

Applicant participated in a counter-intelligence (CI) interview with a government investigator in June 2013. He disclosed that he and one of his brothers fled Afghanistan in 1990 to avoid mandatory conscription during the Soviet occupation and communist regime. They illegally immigrated to Iran after traveling through Pakistan. In 1994 he returned to Pakistan and through an arranged marriage he wed his wife in 1995. His wife is also a naturalized citizen of the United States and sponsored him for immigration to the United States. They immigrated to the United States in 1996. He has two children ages 14 and 10.

¹ Response to FORM.

On the Relatives and Associates form that is part of the CI process, Applicant provided the same information about his parents and sister who live in Iran and about his in-laws. He refers to his wife as his ex-wife. In his answer to the SOR, he stated that they are separated and not divorced.

In his answer to the SOR, Applicant provided different information about his sister in Finland, disclosing she is a citizen of Finland, and he listed his siblings in Canada as being citizens of that country, instead of being citizens of Afghanistan. It is unclear if they became citizens subsequent to Applicant's completion of the e-QIP or if he made an error on his e-QIP. All of his siblings work in the private retail industry. Applicant disclosed in his answer to the SOR that his father passed away three months ago.

Applicant maintains monthly contact with one brother. After Applicant immigrated to the United States, he participated in the Hawala market in order to send money to his mother, father, and sister in Iran.² He sent approximately \$200 to \$300 every month. He used one of two brokers in the state where he lived, but after restrictions were placed on the Hawala process, Applicant then sent the same amount of money to his brother in Canada. His brother sent the money through Hawala to their family in Iran. He continued to do this until about 2010 when his business began to fail. Applicant did not provide any information about any current support he provides to his family in Iran. He indicated in his answer to the SOR that his brothers provide their mother support. He talks to his mother once a week on the phone, but has not seen her in 20 years. He describes his mother as a senior citizen in poor health who has no connection to the Iranian government and receives no financial support from the Iranian system. He described his sister as a housewife. His mother lives with his sister who cares for her.³

The SOR alleged ten delinquent debts totaling approximately \$25,091.⁴ Applicant denies he owes the debts claiming he settled or paid the debts through a third party, who then failed to update the credit bureau agencies with the correct information. He indicated that he hired a credit repair firm to update his credit reports, and it is still in the process. Applicant provided proof he paid a debt that was not alleged in the SOR. He also provided copies of letters from two creditors and a copy of a credit report dated January 18, 2014, with his Answer. The account numbers listed in the letters from the creditors do not match the debts listed on the SOR.⁵

² <http://en.wikipedia.org>: Hawala or Hewala (Arabic: meaning transfer) also known as hundi, is an informal value transfer system based on the performance and honour of a huge network of money brokers, primarily located in the Middle East, North Africa, the Horn of Africa, and the Indian subcontinent, operating outside of, or parallel, to, traditional banking, financial channels, and remittance systems.

³ Answer to SOR; Response to FORM.

⁴ Item 7.

⁵ Item 4.

The Government provided a credit report that shows a state tax lien filed in January 2010 (SOR ¶ 1.a).⁶ It is not reflected on the credit report provided by Applicant or the credit report provided by the Government from 2013.

The debts in SOR ¶ 1.b (\$3,312-credit card) is charged off; SOR ¶ 1.c (\$463 for mobile telephone service) is in collection; SOR ¶ 1.d (\$4,067-credit card) is in collection; SOR ¶ 1.e (\$724-medical account) is in collection; SOR ¶ 1.f (\$254-credit card) is in collection; SOR ¶ 1.g (\$344-telephone account) is in collection; SOR ¶ 1.i (\$1,186-credit card) is charged off/collection; and SOR ¶ 1.j (\$1,563-telephone account) is in collection.

The debt in SOR ¶ 1.h (\$11,052-credit card) is reflected in the credit report Applicant provided as being charged off, and on January 22, 2014, the creditor had a settlement pending. It does not show if the settlement was paid.

The debts in SOR ¶¶ 1.b, 1.i, 1.h and 1.j are reflected as derogatory accounts in the credit report Applicant provided. The remaining SOR debts are reflected on the credit reports provided by the Government. Applicant has not provided independent documentary evidence that he paid the alleged debts or that any disputes he may have made were resolved in his favor.

In his response to the FORM, Applicant stated he has not had access to his mail in four years because he is traveling and working in Afghanistan. He stated he has had limited time to return to the United States and tackle his financial issues. He further stated the following:

I don't have a fixed mailing address.

During the past three years I paid all my bills and have met my obligations, the collection agencies probably sent the receipts to my mailing address and unfortunately I have no access to them.

This is the credit bureaus failure to update the report according to fair credit report requirements.

The credit bureaus deficiency is a national issue.

Due to limited time & ability, I can't provide any documents regarding the payments.

As soon as I get back to the US I can provide those required documents.

When I contacted related collection agencies regarding receipts, they responded that you can receive them by mail in 30 days.

⁶ Item 7.

They don't provide documents through online; therefore it is a challenge to get hold of those documents while I am in Afghanistan.

My X wife doesn't cooperate regarding this matter.

Please study my new credit report.

Most of the negative items were removed & it is a big differen[ce] between three credit agencies concerning the credit report & that clears the case.⁷

Afghanistan

On May 2, 2012, the United States and Afghanistan signed the Enduring Strategic Partnership Agreement. It is a 10-year strategic partnership agreement that demonstrates the United States' commitment to strengthen Afghanistan's sovereignty, stability, prosperity and continue cooperation to defeat al-Qaida and its affiliates. The United States has supported the elected Afghan government, providing development aid and stabilizing the country. The United States supports the Afghan government's goals to steadily increase security and to take action to combat corruption, improve governance and provide better services to its people. Despite some progress, Afghanistan still faces daunting challenges in defeating terrorists and insurgents.

No part of Afghanistan is immune from violence, either targeted or random, against U.S. and other Western nationals. Various groups oppose the strengthening of a democratic government and will use violence to achieve their goals. U.S. citizens who are also citizens of Afghanistan may be subject to other laws that impose special obligations.

There are serious human rights problems in Afghanistan that include widespread violence from armed insurgent groups against persons affiliated with the government. There are indiscriminate attacks on civilians. There are credible reports of torture and abuse of detainees by security forces. There is pervasive corruption, endemic violence, and societal discrimination against women and girls. There are numerous other human rights problems associated with security forces.

The Department of State warns U.S. citizens against travel to Afghanistan and warns that the security threat to all U.S. citizens in Afghanistan remains critical. Extremist networks and groups coordinate complex suicide attacks and assassinations against government leaders. These terrorist groups operate within Afghanistan and also in nearby Pakistan.

⁷ Response to FORM.

Iran

Iran is an Islamic Republic where the ultimate political authority is vested in a religious authority. The United States has not had diplomatic ties or consular relations with Iran since their revolution in 1979. In 2009, President Obama continued the 1979 declaration of a National Emergency with respect to Iran due to the extraordinary threat to national security, foreign policy, and the United States economy.

The United States objects to Iran's sponsorship of terrorism, its nuclear ambitions, and its violations of human rights. Iran has been designated a State Sponsor of Terrorism since 1984. It is noted that Iran has been involved in planning and providing financial support for terrorism activity throughout the Middle East, Europe, and Central Asia. Iran has provided aid in the form of weapons, training, and funding of internationally known terrorist organizations to include HAMAS and other Palestinian terrorist groups, Lebanese Hezbollah, Iraq-based militants, and Taliban fighters in Afghanistan. Iran also trains, equips, and funds Iraqi Shi'a militant groups and refused to bring to justice senior al Qaida members it has detained.

Iran flouts the United Nations Security Council restrictions on its nuclear program. Iran has repeatedly been in non-compliance with the International Atomic Energy Agency program's international obligations. Iran continues to enrich uranium. It has been constructing a second uranium enrichment plant in secret since September 2009. The United States Director of National Intelligence testified that Iran is technically capable of producing enough highly-enriched uranium for a weapon in the next few years and would likely choose a missile as its preferred delivery of a nuclear weapon. Iran has the largest inventory of ballistic missiles in the Middle East.

Iran has sought to illegally obtain U.S. military equipment and other sensitive technology. It is also enhancing its focus on U.S. intelligence activities and relies on foreign intelligence partnerships to extend its capabilities.

The Iranian government has a poor human rights record, which has worsened. Security forces were implicated in custodial deaths and killings of election protesters. Human rights abuses are extensive, including: politically motivated violence, such as torture, beatings, and rape; severe officially-sanctioned punishments, including death by stoning, amputation, and flogging; arbitrary arrest and detentions; and lack of judicial independence and of a fair trial.

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 AG 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 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, 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 as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a

way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them 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 mother and sister are citizens of Afghanistan and reside in Iran. His other siblings are residents in other countries, but their citizenship status is not confirmed. Applicant has provided financial support over the years to his mother when he was able, and maintains weekly telephonic contact. I find the above disqualifying conditions apply to his mother and sister. I also find those members of Applicant's family who are residents of Finland and Canada do not create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. None of the disqualifying conditions apply to them. SOR ¶¶ 1.c and 1.d are concluded in Applicant's favor.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8, and the following are potentially applicable:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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.

Applicant has regular contact with his mother and sister in Iran. He provided them support from 1996 to 2007 until he was no longer able. He has not seen his mother in 20 years, but does talk to her weekly. AG ¶ 8(c) does not apply. Although, Applicant has lived in the United States since 1996, he has only been a citizen since 2010. He has worked for a defense contractor since 2010. There is insufficient evidence to find AG ¶ 8(b) applies. His sister is a housewife and his mother is elderly and in need of care. She receives no financial support from the Iranian government. They do not have contact with government officials or organizations.

The nature of a nation's government and its relationship with the United States is relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. 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 foreign government or the country is known to conduct intelligence operations against the United States. Iran's dismal human rights record, its antagonistic relationship with the United States, and its authoritarian government creates a potential vulnerability. However, considering the relative anonymity of Applicant's mother and sister in Iran, and the lack of government support and contact with them it is unlikely Applicant will be placed in a position of having to choose between his family in Iran and the interests of the United States. I find AG ¶ 8(a) applies.

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has nine delinquent debts totaling approximately \$22,000 of delinquent debts that he is unwilling or unable to pay or resolve. I find the above disqualifying conditions apply to these facts.

There is no 2010 state tax lien reflected on the Government's most recent credit report or on the report provided by Applicant. SOR ¶ 2.a is concluded in favor of Applicant.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant denied all of the delinquent debt allegations in the SOR. He stated he paid or resolved the debts through a third party and he was attempting to clear his credit report through a credit repair firm. He failed to provide supporting documents that he has paid, settled, or resolved the alleged debts. Some of the debts are listed on the credit report he provided. All of them are included in the Government's exhibits. Without substantiating evidence, I am unable to conclude that the debts that are not on the credit report that Applicant provided have been removed because they have been paid. Applicant has the burden of persuasion to show he is acting financially responsible. He failed to provide information as to why he had delinquent debts. If the debts are all paid, he has a responsibility to provide the supporting documents. He has not. I find none of the mitigating conditions 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. I have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 42 years old. His elderly mother and sister live in Iran and are citizens of Afghanistan. Although, Applicant has telephonic contact with them, it is unlikely they would be in a position that Applicant would have to choose between their interests and that of the United States.

Applicant has delinquent debts that he indicated he paid or resolved, but failed to provide sufficient documentary evidence to substantiate his claims. Applicant attributes his difficulty in addressing his financial problems to his work in Afghanistan. It is his responsibility to address the financial issues that have been raised and to meet his burden of persuasion. He has failed to do so. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I find Applicant mitigated the Guideline B, foreign influence security concerns, but failed to mitigate the Guideline F, financial considerations 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:

FOR APPLICANT

Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge