



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



In the matter of:)
)
) ISCR Case No. 13-01213
)
Applicant for Security Clearance)

Appearances

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

12/09/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant's relationships with foreign relatives do not present a heightened risk of exploitation or vulnerability. Applicant has also presented sufficient evidence to mitigate the personal conduct concerns raised by his improper use of privileges and services while working on a U.S. military base in 2011. Clearance is granted.

Statement of the Case

On January 31, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. The case was assigned to another administrative judge, who after convening a hearing on May 29, 2014, continued the case to determine whether DOHA had jurisdiction over the matter.² During the adjournment, Applicant submitted an offer letter from his employer, indicating that the offer was contingent on his ability to obtain a DOD security clearance.³ Jurisdiction established, the case was reassigned to me in June 2014 for hearing.

At the hearing convened on August 18, 2014, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through D, without objection. After the hearing, Applicant timely submitted AE E through G, which were also admitted without objection.⁴ I received the transcript (Tr.) on August 26, 2014.

Procedural Issues

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Pakistan and Afghanistan. Applicant did not object. The written summaries, along with their attachments, are appended to the record as HE II and III, respectively.⁵ The Government did not offer any documents for administrative notice on Germany, the United Kingdom, or the Netherlands.⁶

Findings of Fact

Applicant, 39, is from Afghanistan. As a child, he fled to Pakistan in 1989 with his parents and four siblings after the Soviet Union invaded the country. Applicant immigrated to the United States in 1992 with his mother and siblings. His father died while the family lived in Pakistan. Applicant became a naturalized U.S. citizen in 2001. His brothers and sisters are also naturalized U.S. citizens. His mother, however, maintains permanent resident status. Now 82 years old, Applicant's mother does not work and lives with Applicant. She has lived continuously in the United States since 1992 and has never returned to Afghanistan. In addition to his nuclear family, members of Applicant's extended family fled Afghanistan after the Soviet invasion and settled in other western countries. Two of Applicant's uncles, along with their families, are residents and citizens of Germany. Applicant has a cousin who is a resident and citizen

² See Transcript (Tr 1.), dated May 29, 2014.

³ The June 2, 2014 offer letter is appended to the record as Hearing Exhibit (HE) I.

⁴ Correspondence related to Applicant's posthearing submissions are appended to the record as HE IV.

⁵ Tr 2. at 18.

⁶ Tr 2. at 63.

of the United Kingdom and another set of cousins who are residents and citizens of the Netherlands. Applicant maintains infrequent contact with his extended relatives.⁷

In August 2014, Applicant divorced his wife of 11 years. She is a naturalized U.S. citizen, also from Afghanistan. Their son, 10, is a U.S citizen by birth. Both Applicant's ex-wife and his son reside in the United States. Applicant's parents-in-law, sister-in-law, and three of his brothers-in-laws are citizens of Afghanistan, residing in Pakistan. Although Applicant maintained contact with his in-laws during his marriage, he severed ties with them after he separated from his ex-wife in October 2013.⁸

Applicant has worked as a linguist for several federal contractors since 2004. Applicant was initially granted access to classified information in approximately 2006 and upgraded to sensitive compartmented information access in 2009. He has served two tours of duty, totaling 21 months, supporting military operations overseas and has received numerous awards and commendations for his work. One of Applicant's former clients, a master sergeant who worked with Applicant while deployed in 2005, cited Applicant's ability to collaborate and provide support to different units with compartmentalized responsibilities without compromising any tactical information. In August 2007, Applicant accepted a position working as linguist supporting intelligence operations located at a U.S. military base in Europe. In July 2011, Applicant was fired from this position after a military police investigation substantiated several allegations of misconduct made against him. Applicant admits that he knowingly used a rescinded letter of authorization issued by his employer to obtain benefits to which he was not entitled on the military base. Four of Applicant's co-workers, including one who was a veteran of the U.S. Air Force, were investigated and terminated for the similar acts of misconduct.⁹

According to the investigation, Applicant evaded \$530 in taxes to the host nation by improperly registering his personal vehicle on base instead of with the host nation and purchasing tax-free gasoline for his personal vehicle from the military exchange. The investigation substantiated allegations that he improperly used his DOD identification to obtain a military driver's license, instead of obtaining a driver's license from the host nation. The investigation revealed that he also purchased \$540 in goods and fuel from the military exchange and commissary. Although a prosecutor opined that there was sufficient evidence to file criminal charges against Applicant, no charges were filed against him. In response to the investigation, Applicant de-registered his car and sold it to be in compliance with the rules. In addition to losing his job, Applicant lost his security clearance and received an indefinite ban from U.S. military bases in Europe. He has been unemployed since December 2011.¹⁰

⁷ Tr 2. at 21-24; GE 1-2.

⁸ Tr 2. at 18-21, 25-34; AE G; Answer.

⁹ Tr 2. at 37-41, 49-58; GE 1 -2, 4; AE A-B, D-F; Answer.

¹⁰ Tr 2. at 44-46; GE 2.

At hearing, Applicant testified that his motivation was not to avoid any financial responsibility to the host nation (he earned a six-figure salary). Applicant admitted that at the time, he felt entitled to the on-base privileges, based on his past work supporting military operations and his status within the command he supported as a skilled and respected linguist. Applicant's performance reviews show that he was an outstanding performer who consistently exceeded expectations. During his last evaluation in 2010, the client requested that Applicant's employer take all necessary steps to ensure his retention. Applicant realizes that he acted improperly and expresses remorse for his misconduct.¹¹

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 to be used in evaluating an applicant's eligibility for access to classified information.

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 the applicant or proven by Department Counsel." The applicant 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 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

Foreign Influence

"[F]oreign contacts . . . may be a security concern if the individual has divided loyalties . . ., 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."¹² The SOR alleges that Applicant's relationships with his mother, ex-wife, son, parents-in-law, siblings-in-law, and extended family members, may indicate a foreign preference.

¹¹ Tr 2. at 41, 52-55, 81; AE C.

¹² AG ¶ 6.

Applicant's mother has lived in the United States as a permanent resident for 22 years. There is no evidence that she has any ties to Afghanistan. Applicant's ex-wife and son are both citizens and residents of the United States. Neither resides in Pakistan or Canada as alleged in the SOR. Applicant's extended relatives are citizens of Germany, the United Kingdom, and the Netherlands. There is nothing in the record to indicate that relationships with citizens or residents of those countries create a heightened risk of exploitation or vulnerability for Applicant.¹³ Finally, Applicant's ties to his in-laws have been severed by the dissolution of his marriage. He does not maintain any independent contacts or have ongoing relationships with his ex-wife's parents or siblings. The record does not contain sufficient evidence to find any security risks associated with these relationships.

Personal Conduct

An applicant's personal conduct becomes a concern when his actions show questionable judgment, an unwillingness to comply with rules or regulations, or raises questions about an applicant's ability to protect classified information.¹⁴ The SOR alleges that Applicant was fired from his job as a linguist after military police confirmed several acts of misconduct. Applicant admits that he knowingly obtained goods and exercised privileges on a U.S military base to which he was not entitled. Applicant actions also allowed him to avoid taxes due to the host nation. While Applicant's conduct is not sufficient for an adverse finding under the criminal conduct guideline, it does support a whole person assessment of questionable judgment, unwillingness to comply with rules and regulations, which raises serious doubts about his ability to properly handle and safeguard classified information.¹⁵

Although the financial harm done to the host nation was negligible, Applicant's conduct cannot be considered minor. However, his actions are mitigated by the passage of time. Furthermore, Applicant does not have a history of criminal conduct or other misconduct. On the contrary, his record reveals a stellar work history with no prior disciplinary actions. His conduct is isolated and is not indicative of an inability to properly handle or safeguard classified information.¹⁶ The personal conduct concerns are mitigated.

Whole-Person Concept

In deciding that the security concerns raised by Applicant's conduct are mitigated, I considered the whole-person concept as described in AG ¶ 2(a). On balance, the favorable whole-person evidence in the record outweighs any doubts and concerns about Applicant's current security worthiness. As a linguist, Applicant has

¹³ See AG ¶ 7(a).

¹⁴ See AG ¶ 15.

¹⁵ See AG 16(a).

¹⁶ See AG 16(c).

aided the U.S. military operations abroad. According to Applicant's clients, his work and cultural knowledge directly impacted the security and safety of U.S military members. The record shows that in his six years of service as a linguist, almost two of those deployed overseas, Applicant handled the security-related responsibilities of his position appropriately and without incident. Applicant's decision to improperly use goods and services on the military base where he worked were entirely self-serving. He wanted to avoid the inconvenience and burden of having to engage with the host nation's bureaucracy to register his car and obtain a driver's license. Applicant accepts responsibility for his actions and is remorseful. He has learned that his status does not make him exempt from applicable rules and regulations. Given that the consequences for his behavior have been professionally and financially significant, it is unlikely that Applicant will indulge in such conduct in the future.

Those granted access to classified information are held to a high standard of conduct; they are not held to a standard of perfection. It is not the purpose of a security clearance adjudication to punish applicants for past misconduct. All that is required is that an applicant's past is not indicative of a current inability to properly handle and protect classified information. Here, it is not. Applicant has taken responsibility for his conduct. In doing so, he has successfully rehabilitated himself from an instance of poor judgment. Clearance is granted.

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, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a – 1.h:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge