



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 -----) ISCR Case No. 14-02781
)
 Applicant for Security Clearance)

Appearances

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

October 7, 2015

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on June 15, 2011. (Government Exhibit 1.) On August 12, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the 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; 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 submitted an Answer to the SOR on September 18, 2014, and requested a hearing. Department Counsel was ready to proceed on November 5, 2014. The case was assigned to me on November 13, 2014. Applicant was stationed overseas until May 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 2, 2015. The hearing was held on May 20, 2015. The Government submitted two exhibits, which were admitted without objection. (Government Exhibits 1 and 2.) Applicant testified. Applicant requested that the record

remain open for the admission of additional exhibits. He submitted Applicant Exhibits A through D, which were admitted without objection. The transcript (Tr.) was received on May 29, 2015. The record closed on that date.

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Islamic Republic of Afghanistan. (Tr. 18-20.) Applicant did not object. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 52, married, and has two adult children. He has been employed by a defense contractor since November 2004 as a linguist, and seeks a security clearance in connection with his employment in the defense industry. Applicant admitted allegations 1.a and 1.b in the SOR. These admissions are findings of fact. He denied allegation 1.c.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could. Applicant was born and raised in Afghanistan. He left Afghanistan in 1981, living as a refugee in Pakistan until 1984. At that point he and his wife were sponsored by his mother-in-law and immigrated to the United States. (Government Exhibit 2 at 15; Tr. 22-23.)

Applicant became a naturalized citizen of the United States in 1991. His wife is also a naturalized citizen of the United States. He has two adult children, one of whom was born in Afghanistan and is a naturalized citizen of the United States. His other child is a native-born American citizen. (Government Exhibit 1 at Sections 9, 17, and 19.) Before beginning work with his current employer he returned to Afghanistan once, in 1992. He has had no contact with his family in Afghanistan since that time. In particular, Applicant has had no contact with his family members while he has been working in Afghanistan. He stated, "Since I joined the company, they advised me not to contact anybody." (Tr. 30-31.)

After arriving in the United States Applicant went to school and had various jobs. (Applicant Exhibit A; Tr. 25-26, 36-37.) Applicant was honored by his local community in 1992 for his help in apprehending a burglary suspect. (Applicant Exhibit B.)

In 2004 he began work with his current employer and has been employed by them continually ever since. Applicant deploys overseas for six months, then has one month back in the United States before being deployed again. (Tr. 28.)

1.a. Applicant had seven brothers. His oldest brother, who was in the Afghan Army in the 1970s, has passed away. One of his brothers is a British citizen living in England. A second brother is a Dutch citizen living in the Netherlands. The other four surviving brothers live in Afghanistan. (Government Exhibit 1 at Section 19.) As stated, Applicant has had no contact with any of his family members in Afghanistan for over 20 years.

1.b. Applicant has two sisters who are citizens and residents of Afghanistan. As stated above, Applicant has had no contact with any of his family members in Afghanistan for over 20 years. (Government Exhibit 1 at Section 19.)

1.c. Applicant denied this allegation. As stated, Applicant's oldest brother was in the Afghan Army in the 1970s, but has since passed away. (Tr. 32-33.) In his Answer Applicant stated that in 1992 his father had told him that one of his siblings was trying to get a job with the Afghan government. Applicant did not know which of his siblings was applying for the job. He further stated in his Answer, "I do not recall what position in the government he was applying for, I do not have any type of information regarding the matter."

Applicant's financial situation is stable. He owns a house in one state, and a vacation home in a second state. His net worth is between \$400,000 and \$500,000. Neither he or his family have any assets in Afghanistan. (Tr. 26-27.)

Applicant has had a successful and rewarding career as an interpreter and cultural liaison. He is knowledgeable of security requirements. From 2007 through 2010, due to the nature of his work, he took and successfully passed counter-intelligence polygraph examinations. Applicant has been in combat situations, and was hurt on a mission. When asked whether he had ever been shot at, Applicant replied, "Yes, sir. It happens." Applicant is proud of his job, of the work he does, and the people he works with. (Tr. 28, 38-39, 41-44.)

Applicant submitted various letters and certificates he received for his work in Afghanistan. (Applicant Exhibit C.) These documents span the entire time he has been in Afghanistan.

In March 2006 his supervisor wrote a letter of recommendation for Applicant. He stated:

[Applicant] was selected for involvement in a specialized classified program placing him in a position requiring trust and responsibility for the United States Government. His performance to date has been outstanding. In fact, he is credited with not only providing accurate

linguistic interpretation and general cultural awareness, but he is also credited with providing sound recommendations to decision makers, thereby enhancing mission accomplishment. (Applicant Exhibit C at 7.)

In February 2007 Applicant was commended for his work in another operation. A task force commander wrote, "While supporting a highly sensitive operation, [Applicant and two other interpreters] worked for over 36 straight hours in difficult and often dangerous circumstances. Their contribution was the key component leading to the operation's successful conclusion." (Applicant Exhibit C at 11-13.)

Finally, Applicant presented a letter of recommendation from a senior officer he worked for in 2013. This officer states:

I picked [Applicant] to serve as my command interpreter because of his maturity and willingness to serve the unit in any capacity. . . . I found [Applicant] to always be honest and insightful when conducting his job; he would go out of his way to serve the Task Force and never complained about the mission. . . . He was a valued member of the team. . . . I would gladly work with [Applicant] in the future; I trust him. (Applicant Exhibit C at 17.)

He also offered the coin presented to him by the Director of Operations of a unified command. This coin was presented to Applicant for his help in a specific operation. (Applicant Exhibit D; Tr. 39-41.)

I also take administrative notice of the facts concerning the Islamic Republic of Afghanistan. Of particular significance are the poor human rights situation; and the active and hostile presence of Al Qaida, the Taliban, and other militant extremist groups that generate instability and openly attack police and military forces of the Afghan government, as well as the local populace and U.S. persons and interests.

Policies

Security clearance decisions are not made in a vacuum. 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 are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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, “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's circumstances and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows under AG ¶ 6:

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.

Applicant has family connections to Afghanistan. Accordingly, this requires an analysis under the heightened risk standard. The following disqualifying conditions under AG ¶ 7 apply to this case based solely on the facts:

- (a) contact with a foreign family member . . . 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 . . . 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 . . . by providing that information.

Applicant has provided sufficient evidence to show that the following mitigating conditions under AG ¶ 8 apply to this particular case, given his particular background:

- (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 submitted considerable evidence to show that he has substantial family and financial ties in the United States that outweigh his relationship to

Afghanistan and his relatives there. His evidence also shows that he does not have a conflict of interest between his loyalties to Afghanistan, the country of his family and birth, and the United States. His immediate family lives in the United States.

Applicant has worked hard at his job, as shown by the letters and certificates of appreciation that he has received. His job is of particular importance, and he is acknowledged to be one of the best practitioners. His service in Afghanistan is unblemished. There is no indication that he had breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board stated the following in ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006):

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation.

See *also*, ISCR Case No. 12-09326 at 2 (App. Bd. Jun. 18, 2013). Without being more specific than is appropriate, I find that Applicant's service in his present employment occurred under such circumstances and produced such contributions.

Based on my analysis of the available information, Applicant has overcome the adverse inference of his family members' presence in Afghanistan. Guideline B is found for Applicant.

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. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. My Guideline B analysis is applicable to the whole-person analysis as well. Applicant is a patriotic American citizen, whose work has been of particular value to our military mission in Afghanistan. He presented considerable evidence showing that his preference is for the United States and not Afghanistan. Accordingly, I find that there is little to no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his foreign connections. He is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a through 1.c:

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.

WILFORD H. ROSS
Administrative Judge