



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



In the matter of:)	
)	
)	ISCR Case No. 14-00226
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

03/20/2015

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. Although Applicant has demonstrated a preference for the United States, he failed to mitigate the foreign influence concerns raised by his relationship with his mother and siblings who are citizens and residents of Afghanistan. Clearance is denied.

Statement of the Case

On March 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be

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.

submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted its written case on November 5, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 15, 2014. He timely submitted Applicant's exhibit (AE) A, which is admitted without objection.² The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 7. The case was assigned to me on January 14, 2015.

Procedural Issues

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan. Applicant did not object to the request, and it was approved. The facts administratively noticed are set out in the Findings of Fact, below. The supporting documentation is appended to the record as AP Ex. I – VI.

Findings of Fact

Applicant, 36, has worked for a federal contractor as a linguist supporting U.S. troops abroad since July 2010. Applicant was born in Afghanistan, a country located in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia on the north. With a population of 18 million people, Afghanistan is presently an Islamic Republic that has had a turbulent political history. After the Russians withdrew from the country, fighting continued among the various ethnic, clan, and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic government took power in 2004 after a popular election. Despite that election, terrorists and the Taliban continue to assert power and intimidation within the country. The country's human rights record remains poor. Problems include extrajudicial killings; widespread official impunity; official corruption; and violence and societal discrimination against women. Violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. No section of Afghanistan is safe or immune from violence.³

² Department Counsel's memorandum regarding Applicant's FORM response is appended to the record as Appellate Exhibit (Ap Ex.) VII.

³ GE 4; Ap Ex. I-VI.

Applicant immigrated to the United States in 2002 to attend college. He has obtained both undergraduate and graduate degrees in engineering from a U.S. university and is currently working on his doctorate. Applicant has never married and has no children. After completing his master's degree in 2005, Applicant worked in a variety of engineering-related jobs at his university and with a private firm. He decided to become a linguist after being recruited for the position.⁴

Shortly after completing his first security clearance application in July 2010, Applicant completed a counterintelligence (CI) interview during which he provided information about his mother and seven siblings who were living in Afghanistan. His father is deceased. Applicant disclosed that he sent \$300 to his mother every other month. His mother, 59, does not work outside the home. At the time of the CI interview, Applicant's siblings ranged in age from 13 to 27 years old and were all in various levels of school. One of Applicant's brothers attended graduate school in the United States through a prestigious scholarship program. Before studying in the United States, that brother worked for the Afghanistan government. Applicant last visited his family in Afghanistan in 2009. He speaks to his mother by telephone at least once per month and his siblings at least once every other month. Based on the information Applicant provided during the interview and the corresponding records check, the investigator concluded that Applicant does not pose a counterintelligence or foreign preference risk.⁵

Currently, four of Applicant's siblings are still in school in Afghanistan. His oldest sister is a teacher. One of his brothers is an attorney and has recently moved to India. The brother, who completed his graduate education in the United States, returned to Afghanistan as required by the terms of his scholarship and resumed working in the government. According to Applicant, this brother has recently returned to the United States. Applicant did not provide any additional information about the circumstances of his brothers' emigration from Afghanistan. On occasion, Applicant still sends money to his mother to help with expenses.⁶

Since becoming a linguist, Applicant has lived and worked overseas, embedded with U.S. troops. He has served six deployments, which have included multiple missions in hostile territory. On his bi-annual breaks, Applicant returns to the U.S. city he considers his home base. When he is state side, Applicant spends time with his friends and visits with his university professors. Applicant considers the United States his home. Although Applicant does not own a home, all of his financial assets, which he estimates to be approximately \$450,000, are in the United States.⁷

⁴ GE 4, 7.

⁵ GE 7.

⁶ GE 2; AE A.

⁷ AE A.

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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.

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.

Section 7 of EO 10865 provides that adverse 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

“Foreign 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.”⁸ Applicant admits that his mother and five of his siblings are citizens and residents of Afghanistan. He also admits that he has two brothers who are also citizens of Afghanistan, but have immigrated to India and the United States, respectively.

While the mere possession of close ties with foreign family members or friends is not disqualifying as a matter of law, a close relationship with even one person living in a foreign country is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. A close relationship with a person who is a resident and citizen of a foreign country can be disqualifying if the contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion; or if the relationship could create a potential conflict of interest between the applicant’s obligation to protect sensitive information or technology, and his desire to help a foreign person.⁹ In completing this calculus, evaluating the nature of a nation’s government, its relationship with the United States, and its human rights record is essential. Perilous conditions exist in Afghanistan due to the operation of the Taliban the widespread corruption within the government that once employed Applicant’s brother, the poor human rights record, and the risk of terrorism, especially toward women teaching or pursuing education. As such, a heightened risk exists.

Although Applicant has demonstrated a strong preference for the United States over Afghanistan, he has not presented enough information to mitigate the foreign influence concern raised by his familial relationships with his mother and siblings who are citizens and residents of that country and his two brothers who remain citizens of the same. Applicant failed to demonstrate that his family members’ activities inside Afghanistan make it unlikely that Applicant will ever have to choose between the interests of a foreign individual group, organization, or government and U.S. interests. This inquiry is not satisfied by Applicant’s statements that his family is pro-American or apolitical. Nor is the risk mitigated by the fact that Applicant’s brother, who was employed by the Afghanistan government, has immigrated to the United States. While the Government does not have to prove that the government of Afghanistan or the terrorist groups operating within its borders have threatened or approached Applicant’s relatives, the systematic human rights violations and the ever present danger from terrorists and those who seek to damage U.S. interests cannot be ignored.

Applicant’s contacts with his family, though infrequent, cannot be considered casual. Furthermore, Applicant has not presented evidence of deep and longstanding ties to the United States to support a finding that he can be expected to resolve any

⁸ AG ¶ 6.

⁹ AG ¶¶ 7(a) – (b).

potential conflict of interest in favor of the United States. Accordingly, none of the foreign preference mitigating conditions apply.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept. In his efforts to support the United States in its missions abroad, Applicant has placed his own safety in jeopardy. The level of commitment he shows to his work as a translator is indicative of his loyalty to the United States. However, the circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. Under the "clearly consistent with the national interest" standard, an applicant has a heavy burden of demonstrating extenuation or mitigation of facts with negative security significance. Because he failed to meet his burden, I have no choice but to resolve any doubt about Applicant's security worthiness in favor of the national security.¹⁰

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge

¹⁰ ISCR Case No. 99-0601 at 6 (App. Bd. Jan. 30, 2001); ISCR Case No. 99-0511 at 8-9 (App. Bd. Dec. 19, 2000); ISCR Case No. 98-0252 at 7 (App. Bd. Sept. 15, 1999); *Dorfmont v. Brown*, 914 F.2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (no presumption in favor of granting or continuing a security clearance); Directive, Item E2.2.2. (any doubt must be resolved in favor of national security).