



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



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| In the matter of: |) | |
| |) | |
| |) | ICSR Case No. 14-01928 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Julie R. Mendez, Esq. Department Counsel
For Applicant: *Pro se*

03/24/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied. Applicant did not mitigate security concerns for foreign influence.

Statement of the Case

On August 27, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment as a linguist. (Item 4) Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). (Item 6) The record also includes a counterintelligence report of investigation. (Item 5) After reviewing the results of the background investigation and reviewing the counterintelligence report, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated September 8, 2014, detailing security concerns for foreign influence. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on September 30, 2014. He admitted SOR allegation 1.a, 1.b, and 1.c with comment. He admitted SOR allegation 1.d, but stated that his contacts are only with friends who are also interpreters for the United States. He admitted SOR allegation 1.d but noted that he sold the property in question and gave the proceeds to his family members as a gift. Applicant elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on December 3, 2014. Applicant received a complete file of relevant material (FORM) on December 23, 2014, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide additional information in response to the FORM. The case was assigned to me on March 10, 2015.

Procedural Issues

Department Counsel requested as part of the FORM that administrative notice be taken of certain facts concerning Afghanistan. I have considered the request and the documents provided by Department Counsel. (Item 7) Administrative notice is taken of the facts pertaining to Afghanistan as noted below in the Findings of Fact.

Findings of Fact

After a thorough review of the pleadings, I make the following essential findings of fact.

Applicant was born in Logar, Afghanistan in 1981. As noted by Applicant, Logar is a dangerous area that has terrorist activity. A cousin was recently killed there by terrorists. Applicant worked as a translator for the U.S. military in Afghanistan from January 2006 until March 2008. He entered the U.S. in May 2008 on a special visa for his work as a translator. He became a United States citizen in June 2013. He has worked as a role player/linguist for a defense contractor since January 2009. It appears from his answer to the SOR that he is now working for a defense contractor in Afghanistan.

Applicant married an Afghan citizen in Afghanistan in 2006. He has three children, two born in Afghanistan, and one in the United States. His wife and the two children born in Afghanistan immigrated to the United States in March 2011. They are Afghan citizens but reside in the United States. His wife has permanent resident status in the United States. His third child was born in the United States and is a United States citizen.

Applicant's mother, four brothers, four sisters, his mother-in-law, his father-in-law, and other family members or relatives are citizens and residents of Afghanistan. His mother is a housewife, two brothers are interpreters for the German Army, and two brothers are students. His four sisters are housewives. Most of his siblings reside in Kabul, the capital of Afghanistan. One sister still lives in Logar. His mother-in-law and father-in-law are citizens and residents of Afghanistan, They live in Kabul and his father-in-law is a driver for the Afghan military. Applicant expressed concern for his family in

Afghanistan because of the “bad guys” in Afghanistan. He noted that no family members have been directly threatened by the ‘bad guys’. In 2009 and 2010, Applicant sent approximately \$10,000 to \$15,000 for use by his family. He has also sent money to his brothers who are students for their education. Applicant is in weekly contact with his mother and monthly contact with other family members by phone. He does not talk to any family members about his employment with the United States armed forces except for his two brothers who are also interpreters for coalition forces. There is no indication that he has contact with other people in Afghanistan. Applicant had a share in the family property in Logar that was sold. He gave his part of the proceeds of the sale to his family for their use.

Afghanistan has been an independent nation since 1919, and it was a monarchy until a military coup in 1973. Following a second military coup in 1978, a Marxist government emerged. In December 1979, the Soviet Union invaded and occupied Afghanistan, but they were resisted by the mujahedeen. The Soviet Union withdrew in February 1989 pursuant to an agreement signed by Pakistan, Afghanistan, the United States, and the Soviet Union. The mujahedeen were not a party to the agreement and refused to abide by it. The result was a civil war among several factions, including the Taliban. By the end of 1998, the Taliban controlled most of Afghanistan, committed atrocities against minority populations, and provided sanctuary to terrorist organizations. U.S. military forces, along with forces from a coalition partnership, forced the Taliban out of power by November 2001. With the assistance and support of the United States, a new democratic government took office in 2004.

Afghanistan formed a democratic government in 2004. The United States and its coalition partners have over 50,000 troops serving in Afghanistan assisting the Afghan government in maintaining peace and stability in the country. Even though progress has been made since then, Afghanistan faces many challenges including defeating terrorists and insurgents, recovering from decades of civil strife, and rebuilding an economy and infrastructure. The Taliban insurgency has continued with frequent, sophisticated, dangerous, and destabilizing activities in spite of United States and coalition military operations. Civilians continue to bear the brunt of the violence. The Taliban continues to maintain momentum in spite of losses to their leadership. Armed conflict has spread to almost one-third of the country. The lack of security in many areas and generally low government capacity and competency has hampered efforts at self-governance and economic development. There is continued government corruption and substantial drug trade.

Afghanistan’s human rights record is generally poor with extrajudicial killings, torture, poor prison conditions, official impunity, prolonged pretrial detention, restrictions on freedom of press and religion, violence against women, sexual abuse against children, and human trafficking. Its poor human rights record is due to the continuing insurgency, the weak government, and ongoing recovery efforts from two decades of war. In spite of efforts by the United States and the government of Afghanistan, it continues to be a violent, unsafe, unstable country. The weak government and internal instability have enabled hostile states, non-state actors, terrorists, and insurgents to continue operating in Afghanistan, including groups hostile to the United States.

Insurgents use narcotics trafficking and kidnapping to finance their military and technical capabilities. Suicide bombing attacks continue to inflict casualties. The Taliban has strengthened its activities because of Pakistan funding sources, the drug trade, and kidnappings. The Taliban insurgent operations result in numerous attacks and deaths targeted at non-government organizations, journalists, government workers, and United Nation workers. There are militant attacks by rockets, vehicle-borne explosive devices, and suicide bombing, even in the capital city, Kabul. The United States Department of State classifies the situation in Afghanistan as a critical security threat to United States citizens.

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 adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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.

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 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

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 the U.S. interest, 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 consideration 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 ¶ 6)

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. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of the government in Afghanistan, its relationship with the United States, the presence of U.S. and coalition forces in the country, and Afghan's human rights records are relevant in assessing the likelihood that an applicant's family members may be vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has a corrupt or authoritarian government or a family member is associated with or dependent upon government. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.

Applicant's mother, four brothers, four sisters, and his in-laws are citizens and residents of Afghanistan. His family's presence in Afghanistan may place Applicant in a position where he is vulnerable to pressure or coercion by a foreign interest because of the potential to manipulate or induce Applicant to help his family in a way that is not in the U.S. interest. Two disqualifying conditions under AG ¶ 7 are raised by the facts in SOR allegations 1.a, 1.b, and 1.c:

(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.

There is not sufficient information in the file to substantiate that Applicant maintains contact with family members and friends in Afghanistan than those mentioned above. Also, the family property in Afghanistan has been sold and Applicant turned his share of the proceeds of the sale of the property to his family member. Applicant has no financial or property interests in Afghanistan. SOR allegations 1.d and 1.e are found for Applicant.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The two disqualifying conditions require evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. An applicant with foreign family ties to a country that presents a heightened risk has a very heavy burden of persuasion to show that neither he nor his family member are subject to influence by that country. The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. There is a heightened risk for family members in Afghanistan created by Afghan's weak and corrupt government; the convergence of insurgent, terrorist and criminal networks, specifically the Taliban and Haqqani networks; and the significant human rights issues.

Applicant raised facts to mitigate the security concerns arising from his family members in Afghanistan. I considered the following Foreign Influence Mitigating Conditions under AG ¶ 8:

(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; and

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

None of these mitigating conditions apply. The nature of the Afghan government, the threats from terrorist organizations operating in the country, the disregard for human rights, and the hostility of the Taliban to the United States, place a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. There is a rebuttable presumption that contacts with immediate family members in a foreign country are not casual. Applicant has contact with his mother weekly by telephone and monthly with other family members. This level of contact is not casual or infrequent, so he has not rebutted that presumption. In addition, Applicant sent money to his family for their support, and gave the proceeds from the sale of property to his family members. Applicant has minimal ties to the United States. He came to the United States in 2008 after serving for the U.S. Forces in Afghanistan and became a United States citizen less than two years ago in June 2013. He has since worked training U.S. forces for service in Afghanistan. In Applicant's favor is that he only returned to Afghanistan for employment in support of U.S. armed forces. His wife and children are residents of the United States and his wife has obtained permanent resident status.

Applicant has not presented sufficient information to establish that his sense of loyalty to the United States is such that it is unlikely that his sense of loyalty or obligation to the United States would outweigh his sense of loyalty to his family members in Afghanistan. The presence of family members in Afghanistan can place him in a position to have to choose between the interests of his family members and the interest of the United States. I am not satisfied that he can be expected to resolve any conflict of interest in favor of the United States interest. The information presented by Applicant does not negate the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the circumstances in Afghanistan. Accordingly, Applicant has not met his heavy burden to mitigate the security concern for his relationships with his family members in Afghanistan. I conclude Applicant has not mitigated security concerns for foreign influence.

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 access to sensitive information 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 carefully considered all of the circumstances discussed above in regard to disqualifying and mitigating conditions as well as the following factors in light of the whole-person concept. The “whole-person concept” requires consideration of all available information about Applicant, not a single item in isolation, to reach a commonsense determination concerning Applicant’s security worthiness.

I considered that Applicant has served as a trainer preparing soldiers to deploy to Afghanistan and as an interpreter for U.S. armed forces in Afghanistan. The Government has a compelling interest to protect sensitive information. This requires that any doubt about the risks associated with Applicant’s foreign contacts be resolved in favor of the Government. Applicant’s family members in Afghanistan create an unacceptable risk for Applicant that must be resolved in favor of the Government. Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for access to classified information. Applicant has not met the heavy burden to mitigate the potential security concerns for foreign influence arising from his family’s connection to Afghanistan. Applicant is denied access to classified information.

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:

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| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.c: | Against Applicant |
| Subparagraphs 1.d – 1.e: | For Applicant |

Conclusion

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

THOMAS M. CREAN
Administrative Judge