

DATE: July 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-08954

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The security concerns raised by a 24-year-old Afghanistan-born naturalized American Applicant with permanent resident, non-U.S. citizen, mother and sister (citizens of Afghanistan), and three non-resident, non-U.S. citizen, sisters (citizens of Afghanistan and residents of India), as well as naturalized American father, sister, and uncle, none of whom are agents of Afghanistan or India or in a position to be exploited by those governments, have been mitigated by the evidence developed herein. Clearance is granted.

STATEMENT OF THE CASE

On March 3, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated March 19, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to another Administrative Judge on April 14, 2003, but, due to caseload considerations, was reassigned to, and received by, this Administrative Judge on May 8, 2003. A notice of hearing was issued on May 8, 2003, and the hearing was held before me on May 28, 2003. During the course of the hearing, four Government exhibits, three Applicant exhibits, and the testimony of four Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on June 6, 2003.

RULINGS ON PROCEDURE

At the commencement of the hearing, the Department Counsel moved to amend subparagraph 1.a. of the SOR by

deleting the word "residents" and substituting therefore the word "citizens." There being no objection interposed by Applicant, the motion was granted.⁽¹⁾

FINDINGS OF FACT

Applicant has admitted all the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 1.a. through 1.c.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 24-year-old employee of a defense contractor seeking to obtain a security clearance, the level of which has not been revealed.

Applicant is at least a third generation Afghanistan-born ethnic Indian. He was born in 1979 in Afghanistan,⁽²⁾ but when he was one-year-old, and fighting erupted when the Soviet Union invaded Afghanistan, he moved with his family to India.⁽³⁾ In April 1994, when he was about 15-years-old, he, his parents, and one sister, immigrated to the United States under the sponsorship of his uncle-a U.S. citizen.⁽⁴⁾ His father and sister both eventually became naturalized citizens of the U.S.,⁽⁵⁾ but because of difficulties learning the English language, his mother found it too difficult to apply for her U.S. citizenship.⁽⁶⁾ Instead, she remains a citizen of Afghanistan and a legal resident of the U.S.⁽⁷⁾ A second sister also emigrated to the U.S. and she too is a citizen of Afghanistan and a legal resident of the U.S.⁽⁸⁾

Three other older sisters are citizens of Afghanistan residing in India with their respective Indian husbands and school-aged children.⁽⁹⁾ The sisters are housewives.⁽¹⁰⁾ His brothers-in-law are employed in private business, and are not associated with any government or military agencies.⁽¹¹⁾ Applicant's contacts with his overseas sisters is infrequent, and he tries to speak with them on the telephone, all at the same time, about two times per year.⁽¹²⁾

Applicant graduated from high school in the U.S., and in 2000, received a bachelors degree from a U.S. university.⁽¹³⁾

Neither Applicant nor his parents have any foreign investments or financial interests in either India or Afghanistan.⁽¹⁴⁾ While he supports his parents, he does not send any money to his sisters in India.⁽¹⁵⁾ Applicant maintains no personal, financial, or religious ties in Afghanistan.⁽¹⁶⁾ His focus is entirely in the United States where he now owns a home, has bank accounts, employment, and a retirement plan.⁽¹⁷⁾ He considers the U.S. his home and does not want to reside in any other country. Applicant has been employed by his current employer-a government contractor-as a software engineer since July 2000. Applicant's friends, college roommates, and co-workers all speak very favorably in support of his application.

Although there are remnants of the former Taliban regime and the terrorist Al-Qaida network in Afghanistan, and there are continuing threats of terrorist actions, Afghanistan has a strong military presence of U.S. forces assisting the new interim government. Afghanistan is no longer a nation whose interests are inimical to the United States, but it cannot yet be considered a friendly "democracy" following a lengthy period in which it was under Taliban authoritarian rule. Nevertheless, it is not known to conduct intelligence operations or economic espionage against the United States.

Although the government has offered no evidence pertaining to India, while that nation is generally considered to be a democracy, it apparently does engage in economic intelligence gathering in the U.S.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's

eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

[GUIDELINE B - FOREIGN INFLUENCE]: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," ⁽¹⁸⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. 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 that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an 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.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness testimony, demeanor, and credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline B, the Government has established its case. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, his mother and one sister are citizens of Afghanistan but residents of the U.S.; and three sisters are citizens of Afghanistan but residents of India--are either not citizens or residents of the United States or may be subject to duress. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B: [\(19\)](#)

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

The citizenship status of four of Applicant's sisters (the three residing in India and the one residing in the U.S.), as well as the citizenship status of his mother, when considered in light of the nature of the government in Afghanistan--a friendly nascent democracy that is no longer hostile to the United States, and whose interests are no longer inimical to the United States, with a strong military presence of U.S. forces--facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein. Furthermore, that analysis is simplified by the fact that none of Applicant's relatives remain in Afghanistan, but rather had relocated either to the U.S. or India. Applicant's father, sister, and uncle are already naturalized U.S. citizens, and only the continuing Afghanistan citizenship of his mother and four other sisters raise the issue of potential foreign influence. In this regard, see Foreign Influence Disqualifying Condition (DC) E2.A2.1.2.1. (*an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) and DC E2.A2.1.2.2. (*sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists*).

However, also applicable, in this instance, is Foreign Influence Mitigating Condition (MC) E2.A2.1.3.1. (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*). In this instance, after an examination of the evidence, I determine that Applicant's mother and four sisters, considering their citizenship and residency status, do not constitute an unacceptable security risk. Furthermore, their continuing personal relationship is viewed in positive terms, having no security significance. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline B. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for 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:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. Tr. at 9-10.
2. Government Exhibit 1 (Security Clearance Application (SF 86), dated August 14, 2001), at 1.
3. Tr. at 21.
4. Government Exhibit 2 (Statement, dated December 13, 2001), at 2.
5. *Id.*, at 6-7.
6. Tr. at 24.
7. *Id.*
8. Applicant Exhibit C (Approval Notice-Application to Adjust to Permanent Resident Status, dated February 11, 2003).
9. Government Exhibit 2, *supra* note 4, at 2.
10. Tr. at 30.
11. *Id.*, at 31.
12. *Id.*, at 32.
13. Government Exhibit 1, *supra* note 2, at 3.
14. Tr. at 39.
15. *Id.*
16. *Id.*, at 43.
17. *Id.*
18. *See* Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see* Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see* Enclosure 2

(Change 3), Adjudicative Guidelines, at 2-2).

19. *See* ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.