

KEYWORD: Foreign Influence; Foreign Preference; Personal Conduct

DIGEST: Applicant is a 55-year-old naturalized U.S. citizen who has lived and worked in the U.S. for 18 years. He was born in Afghanistan, but became a naturalized U.S. citizen in 2001. In 2003, he intentionally falsified his security clearance application by not disclosing his use of marijuana. Applicant mitigated the security concern under foreign preference but not under foreign influence and personal conduct. Clearance is denied.

CASENO: 03-21111.h1

DATE: 06/07/2006

DATE: June 7, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-21111

**DECISION OF ADMINISTRATIVE JUDGE**

**NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 55-year-old naturalized U.S. citizen who has lived and worked in the U.S. for 18 years. He was born in Afghanistan, but became a naturalized U.S. citizen in 2001. In 2003, he intentionally falsified his security clearance application by not disclosing his use of marijuana. Applicant mitigated the security concern under foreign preference but not under foreign influence and personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On September 28, 2005, 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 Review Program* dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant. The SOR alleges security concerns under Guidelines C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct). The SOR 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 October 27, 2005, Applicant responded to the SOR and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's File of Relevant Materials (FORM) dated February 10, 2006.<sup>(1)</sup> Applicant received the FORM on February 14, 2006, and was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. Applicant did not submit a written response. The case was assigned to me on May 22, 2006.

### **Ruling on Procedure**

On February 10, 2006, the government moved to amend the SOR. More specifically, it sought the following changes to subparagraphs 2.b.; 2.d.; and 2.e. of the SOR: delete the word "girlfriend" and substitute the word "wife."

2.b. Your wife, who is also your third cousin, is a resident of Afghanistan.

2.d. You send approximately \$100.00 a month to your wife residing in Afghanistan.

2.e. You send approximately \$300.00 - \$400.00 a month to your wife's family residing in Afghanistan.

There being no objection to the motion by Applicant, the motion was granted and the SOR amended as stated.

### **FINDINGS OF FACT**

Applicant admitted all the factual allegations of the SOR pertaining to foreign preference under Guideline C (subparagraphs 1.a. and 1.b.) and foreign influence under Guideline B (subparagraphs 2.a. through 2.g.) except allegation 2.f. He admitted the factual allegations under subparagraphs 3. a. and 3.b., but denied the underlying security concerns under the guidelines.<sup>(2)</sup> Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant is 55 years old. He was born and raised in Afghanistan.<sup>(3)</sup> In 1980, he fled the country to Pakistan because of a repressive government. From 1980 until 1987, he was a commander of Afghan refugees fighting in Pakistan against the communist government. In 1991, he married a Pakistani woman. However, that marriage ended in divorce in 1992. He remarried in 2003 and has one child.<sup>(4)</sup> He is now seeking a clearance for a position as a translator in the United States with a defense contractor.<sup>(5)</sup>

Applicant emigrated to the U.S. more than 18 years ago. In 2001, he became a naturalized U. S. citizen. He obtained a U.S. passport in 2002 and uses it when he travels.<sup>(6)</sup> In his 2003 statement, Applicant did not consider himself "a dual citizen of Afghanistan and the U.S." He never had a passport from Afghanistan.

Applicant's parents are deceased. He has no other family left in his homeland. His second wife (who is also his third cousin) is a citizen and resident of Afghanistan. He maintains contact with her via the telephone. He visited Afghanistan in 2003 and 2004 and plans more trips for longer time periods.<sup>(7)</sup> He sends money (\$400.00) to his wife and her family each month. He plans on an extended trip to visit her soon, and considered employment options with the government or private industry in his homeland.

Although he asserts he is not political, he has a family friend who is a past president of Afghanistan. This friend still works for the government, and Applicant last saw him in 2002, when he was visiting the U.S. He has several other friends who are resident citizens of Afghanistan.

When completing his 2003 a security clearance application, Applicant answered "no" to question 27: **'Your Use of Illegal Drugs and Drug Activity- Illegal Use of Drugs.** Since the age of 16, or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenic (LSD, PCP, etc.), or prescription drugs?"<sup>(8)</sup> In so doing, he failed to disclose his use of marijuana. In his response to the amended SOR, he admitted he lied about the use of marijuana because he feared it would negatively affect his security clearance. Also, he intentionally falsified his statement to a police officer after testing positive for marijuana on or about May 4, 1999.

According to the U.S. State Department, the fall of the Taliban in 2001 opened a new chapter in Afghanistan's foreign relations. Afghanistan is now an active member of the international community, and has diplomatic relations with countries from around the world. In December 2002, the six nations that border Afghanistan signed a "Good Neighbor" Declaration, in which they pledged to respect Afghanistan's independence and territorial integrity.<sup>(9)</sup>

The U.S. supports the emergence of a broad-based government, representative of all Afghans and actively encourages a UN role in the national reconciliation process in Afghanistan. Today, the U.S. is assisting the Afghan people as they rebuild their country and establish a representative government that contributes to regional stability, is market friendly, and respects human rights. In May 2005, President Bush and President Karzai concluded a strategic partnership agreement committing both nations to a long-term relationship.<sup>(10)</sup>

## **POLICIES**

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be applied when determining security clearance eligibility. The adjudicative guidelines

specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2 of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept 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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.<sup>(11)</sup> The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.<sup>(12)</sup> It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the initial burden of proof in the adjudicative process to establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.<sup>(13)</sup> When the government meets this burden, a heavy burden of persuasion then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.<sup>(14)</sup>

Based upon consideration of all the evidence submitted in this matter, the following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

**Guideline C - Foreign Preference: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.**

**Guideline B - Foreign Influence: 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.**

**Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

The Guideline C, B, and E disqualifying and mitigating conditions, applicable to this case, are set forth and discussed in the Conclusions section below. For clarity, I will discuss each separately.

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal standards, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

#### **Foreign Preference**

The government conceded in the FORM, based on the record evidence, there is not sufficient evidence to support a Guideline C security concern.

Applicant does not have an Afghan passport. Foreign Preference Disqualifying Condition (FP DC E2.A3.1.2.2 (*possession and/or use of a foreign passport*)) does not apply.

Applicant's citizenship is based on his birth in Afghanistan. Foreign Preference Mitigating Condition (FP DC) E2.A3.1.3.1 (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) applies in this case.

Applicant states since he is a naturalized citizen of the United States, he does not use his birth-given citizenship. He is thankful he left his country and was given an opportunity to have a safe life. He states he is fully loyal to the United States and would bear arms against Afghanistan. FP MC E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*) applies in this case.

I find for Applicant under Guideline C Foreign Preference.

### Foreign Influence

The government has established its case under Guideline B. Applicant's wife is a citizen and resident of Afghanistan. His wife's family members are residents of Afghanistan. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under the Guideline. Such ties raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. Whether an applicant's family ties in a foreign country pose a susceptibility to foreign influence depends on a common sense evaluation of the overall facts and circumstances of those family ties.<sup>(15)</sup> Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*an immediate family member or person to whom the individual has close ties of affection or obligation, is a citizen, or, a resident or present in, a foreign country*), applies in this case.

Applicant lives and resides in the United States. Applicant has frequent communication with his wife and her family. He traveled to Afghanistan in 2003 and 2004. He is planning a three or four-month trip in the future. I conclude this potentially disqualifying condition applies. Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*An immediate family member or person to whom the individual has close ties of affection or obligation, is a citizen, or, a resident or present in, a foreign country*)

Applicant acknowledged he has longtime friends and associates who are connected to the Afghanistan government. His last contact was recent (2002) and occurred while he was living in the United States. Applicant's personal and family ties to his homeland are not in dispute. His wife's family and his family friends are citizen residents and could be subject to coercion or pressure by the government. In addition there is no information about his wife and her family with respect to government connections. FI DC E2.A2.1.2.3. (*Relatives, co-habitants, or associates who are connected with any foreign government*) applies in this case.

As discussed earlier, Applicant maintains close contact with his family and visits them frequently. He also has contact with his family friend who is involved in the government in a high-ranking position. Applicant bears the burden of demonstrating that his family members are not in a position where they could be exploited by a foreign power in a way that could force him to choose loyalty to those relatives and the U.S. Applicant has not met his burden to establish his wife and her family are not vulnerable to pressure or duress by a foreign power. The record is devoid of any information concerning their identity or whether they are in anyway connected to the government, military, or intelligence services. Foreign Mitigating Condition FI DC E2.A2.1.3.1 (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associates(s) in questions are not agents of a foreign power or 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*) does not apply.

I find against Applicant under Guideline B for Foreign Influence.

## Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Applicant admits he did not disclose his use of marijuana on his security clearance application. He feared that an affirmative answer to the question might result in denial of his security clearance. He did not forget nor misunderstand the question. He made a deliberate choice to omit the information. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.1.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigation, determine employment qualifications, award benefit status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies in this case.

Applicant boldly admitted he lied on his security application. The incident concerned use of marijuana in 1999. While that may not be "recent" the deliberate omission occurred on his 2003 application. The fact that he now acknowledges the omission, does not erase the conduct. Personal Conduct Mitigating Condition (PC MC) 2 E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) and PC MC 4 E2.A5.1.3.4. (*Omission of material facts was caused or significantly contributed by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided*) do not apply in this case. In light of his I conclude Applicant has not mitigated the falsification under personal conduct.

Finally, I considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am not persuaded by the evidence in this case that Applicant would not be vulnerable to pressure or duress from a foreign power or the government of Although Applicant has developed a stable life in the U.S., he has provided no information about his wife and her family. Ordinarily, an applicant's foreign citizenship possesses little security significance if based solely on his birth in a foreign country. I am persuaded by the totality of the evidence in this case that although Applicant is proud of his U.S. citizenship and vows to fight against any government threatening it, he is vulnerable due to his family and friends in Afghanistan. A detrimental impact on the interests of the United States is not required before the Government may deny access under Guideline B or C. Applicant has not mitigated the security concerns under Foreign Influence, and Personal Conduct in this case.

## **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 C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2. f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: Against Applicant

Paragraph 3. Guideline E. AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

## DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Noreen A. Lynch

Administrative Judge

1. The government submitted eleven items in support of its contentions.
2. Item 3 (Applicant's Answer, dated October 27, 2005 ) at 1-6.
3. *Id.*
4. Item 5 (Applicant's Statement, dated August 13, 2003 ) at 1-21.
5. Item 4 (Security Clearance Application (SF 86), dated February 22, 2003 ) at 3.
6. *Id.* at 1.
7. *Id.* at 2.
8. Item 5, *supra* note 4, at 21.
9. Item 9 (United States Department, of State, Background Note: Afghanistan, dated June 9, 2005) at 1-13.
10. *Id.* at 12.
11. *Department of Navy v. Egan*, 484 U.S. 518, 517 (1988).
12. Executive Order 10865, § 7.
13. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
14. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
15. ISCR Case No. 98-0419 at 5 (App. Bd. Apr 30, 1995).