

KEYWORD: Foreign Influence; Financial

DIGEST: Applicant failed to mitigate Guideline B security concerns resulting from his close ties to family members who are citizens of Afghanistan and Guideline F security concerns resulting from a history of financial over-extension. Clearance is denied.

CASENO: 04-02241.h1

DATE: 11/30/2005

DATE: November 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02241

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate Guideline B security concerns resulting from his close ties to family members who are citizens of Afghanistan and Guideline F security concerns resulting from a history of financial over-extension. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 27, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing May 16, 2005, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on July 18, 2005. The FORM contained documents identified as Items 1 through 17. A copy of the FORM was forwarded to Applicant on July 22, 2005, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on August 7, 2005. He did not submit additional information or objections within that time period or thereafter. On October 11, 2005, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains six allegations of disqualifying conduct alleged under Guideline B, Foreign Influence, and twenty-two allegations under Guideline F, Financial Considerations. (Item 1) In his answer to the SOR, Applicant admitted five

of the six allegations under Guideline B and all twenty-two debts alleged under Guideline F. (Item 2) His admissions are incorporated as findings of fact.

Guideline B

Applicant is a 42-year old translator employed by a defense contractor. He was born in Afghanistan and immigrated to the U.S. in approximately 1982. In 1994, he earned an associate's degree in travel and tourism from a U.S. institution. He became a naturalized U.S. citizen in 1994. From approximately 1994 to 2003, Applicant was employed as a travel agent. (Item 4; Item 5; Item 6)

In 2000, Applicant traveled to Pakistan to marry his wife, a citizen of Afghanistan. Applicant

and his wife traveled to Malaysia for a part of their honeymoon. She now resides with Applicant in the U.S. (Items 4 and 6)

Applicant's father, who was a citizen of Afghanistan, is deceased, as is his step-father, who was also a citizen of Afghanistan. Applicant's mother is a U.S. citizen. Applicant's sister, a U.S. citizen, is married to a Pakistani citizen. The sister and her husband live in the U.S. Applicant has a brother who is a U.S. citizen and who resides in the U.S. Applicant also has a half-brother, who is a citizen of Afghanistan and is a U.S. resident. (Item 4 and Item 5)

Applicant's father-in-law and mother-in-law are citizens of Afghanistan. The father-in-law is a retired judge in Afghanistan's judicial system. In 2003, when Applicant completed his security clearance application (SF-86), the parents-in-law were residing in Pakistan, along with two of Applicant's sisters-in-law and one of his brothers-in-law. Sometime between 2003 and 2005, the parents-in-law and at least two of their children who are high school students left Pakistan. They are now residing in Afghanistan. (Item 3) Sua sponte, I amend allegation 1.b. of the SOR to correspond with the facts as presented in Applicant's response to the SOR. Accordingly, allegation 1.b. of SOR, as amended, reads as follows: "Your mother-in-law, father-in-law, two sisters-in-law, and brother-in-law are citizens of Afghanistan and residents of Afghanistan."⁽³⁾

Applicant is in telephone contact with his wife's parents in Afghanistan approximately twice a month. Applicant has monthly telephone contact with his sister's husband and with his wife's four siblings. Applicant has weekly contact with his half-brother who is a citizen of Afghan residing in the U.S. (Item 5)

Applicant has two distant relatives who are citizens and residents of France. When these relatives come to the U.S., they

stay in Applicant's home. When Applicant visited France, he stayed in their home. He has telephone contact with these relatives two or three times a year, and does not consider his contacts with these relatives to be close or continuous. (Item 5)

In addition to his travel to Pakistan and Malaysia in 2000, Applicant traveled to Pakistan and Afghanistan in August and September 2002. He stayed with family in both countries. The purpose of his visit to Afghanistan was "to observe the new government in Afghanistan after the Taliban." (Item 5, at 4) Applicant also traveled to France, Mexico, Jamaica, and Cost Rica in connection with his work as a travel agent. (Item 5)

I take administrative notice of four documents provided by Department Counsel in the FORM. Two of these documents refer to Pakistan; two refer to Afghanistan. The first of these documents is entitled "Pakistan," a consular information sheet prepared by the Bureau of Consular Affairs, U.S. Department of State, which was current as of July 15, 2005. (Item 13) A second relevant document is a Travel Warning, prepared by the U.S. Department of State, which is dated March 25, 2005. (Item 14) The Travel Warning informs U.S. citizens that terrorist groups associated with Al-Qaida and the Taliban continue to operate inside Pakistan, threatening U.S. interests and the lives and safety of U.S. citizens who elect to travel to Pakistan. The Consular Information Sheet, entitled "Pakistan," warns about extremist groups which employ bombings and assassinations to threaten U.S. and other Western interests in Pakistan. Because of the possibility of sectarian violence, U.S. citizens are advised to avoid all public places of worship in Pakistan. U.S. citizens of Afghan origin are advised that in some provincial areas they can be targeted by local people and officials if they lack a well-established family network in Pakistan.

The U. S. Department of State Consular Information Sheet entitled "Afghanistan" (Item 16) and a U.S. Department of State Travel Warning on Afghanistan, dated June 9, 2005 (Item 17), strongly warn U.S. citizens not to travel to Afghanistan. The Travel Warning describes an on-going threat from terrorist groups in Afghanistan to kidnap and assassinate U.S. citizens and international workers. The Travel Warning asserts Afghan authorities have only a limited ability to ensure the safety of U.S. citizens.

Guideline F

Applicant has a history of financial delinquencies that began in the 1990s and continue to the present. He admitted the 22 debts, totaling approximately \$39,000, that are alleged in the SOR. Of Applicant's admitted delinquencies, 12 were charged off as bad debts in 2001 and 2002. Six additional debts were placed for collection in 2001 and 2002. The evidence shows Applicant defaulted on two loans in approximately September 2003. Additionally, three medical bills owed by Applicant were sent to a collection agency in September 2002.

Applicant prepared a signed, sworn statement to a special agent of the Defense Investigative Service in January 2004. In that statement, he attributed the debts to a downturn in his business. (Item 5, at 5-6) While he stated he had contacted

some of the creditors to negotiate payment plans, no plans were presented. He does not plan to file for bankruptcy. (Item 3; Item 5)

Applicant did not pursue credit counseling because he was unable to pay the fees charged by the credit counseling companies. He said his wife was attending school and hoped to obtain a job that would enable her to help pay his debts. He said he would be able to pay his debts if he could work for the government contractor who had proposed him for a security clearance. (Item 5, at 5-6)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to

rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

In the amended SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's spouse was a citizen of Afghanistan who resided currently in the U.S. (¶ 1.a.); that Applicant's mother-in-law, father-in-law, two sisters-in-law, and brother-in-law are citizens of Afghanistan and residents of Afghanistan (¶ 1.b.); that Applicant's sister resides in Pakistan (¶ 1.c.); that Applicant's father-in-law is a former judge in Afghanistan (¶ 1.d.); that Applicant traveled to Pakistan in 2000 and 2002 (¶ 1.e.); and that he traveled to Afghanistan in 2002 (¶ 1.f.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the governments of Pakistan and Afghanistan are unable to contain or control internal groups that support international terrorism and are hostile to the United States. These hostile groups directly threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of Afghanistan or Pakistan could be vulnerable to coercion, exploitation, or pressure.

The citizenship and residency of Applicant's mother-in-law, father-in-law, two sisters-in-law, and brother-in-law raise security concerns under DC E2.A2.1.2.1 of Guideline B. The fact that Applicant shares his home with his wife, who is a citizen of Afghanistan and whose parents and siblings are citizens and residents of Afghanistan, raises security concerns under DC E2.A2.1.2.2. Applicant's father-in-law's status as a former judge in Afghanistan raises security concerns under DC E2.A2.1.2.3. Applicant's travel to Afghanistan in August and September of 2002 raises security concerns under DC E2.A2.1.2.6.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the US. MC E2.A2.1.3.1. While the evidence does not establish

that Applicant's wife and her immediate family members are agents of a foreign power, they are citizens of a state where individuals with interests antithetical to the United States operate without constraint of law. Applicant's father-in-law once held a position of responsibility and trust in the government of Afghanistan. He and the other members of Applicant's wife's immediate family could be exploited by those lawless or terrorist groups in ways that could force Applicant to choose between loyalty to them and the United States. (ISCR Case No. 02-13595, at 4-5 (App. Bd. May 10, 2005)) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contact and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's contacts with his family members who are citizens and residents of Afghanistan are based on ties of familial affection or obligation. He traveled twice to Pakistan to visit them. He is in frequent contact with his mother-in-law, father-in-law, two sisters-in-law and brother-in-law who are citizens and now residents of Afghanistan. His relationship with his wife and her immediate family members is based on neither casual nor infrequent contact. Accordingly, mitigating condition E2.A2.1.3.3 does not apply to Applicant's relationships with his wife and her immediate family members.

Applicant is a U.S. citizen. In August and September 2002 he traveled to Afghanistan to make a personal political assessment of the condition of post-Taliban Afghanistan. MC E2.A2.1.3.2. does not apply to this conduct.

Nothing in Applicant's answers to the SOR suggested he was not a loyal American citizen and a credit to his adopted country. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that could result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.a., 1.b., 1.d., 1.e., and 1.f. of the SOR are concluded against the Applicant. The Government's assertion in allegation 1.c. of the SOR was not supported by the evidentiary record. Accordingly, allegation 1.c. of the SOR is concluded for the Applicant.

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and he has not demonstrated a willingness to satisfy his debts. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged the following financial delinquencies: that Applicant owed a debt of approximately \$5,932.00 to a creditor on an account opened in about May 1999, and that as of March 9, 2005, the debt had not been

satisfied (¶ 2.a.); that he owed approximately \$286.00 on an account charged off as a bad debt in about May 2001, and that as of January 12, 2004, the debt had not been satisfied (¶ 2.b.); that he owed approximately \$1,497.00 on an account charged off as a bad debt in about July 2001, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.c.); that he owed a creditor approximately \$2,296.00 on an account charged off as a bad debt in about October 2001, and that as of January 12, 2004, the debt had not been satisfied (¶ 2.d.); that he owed approximately \$4,027.00 to a creditor for an account charged off as a bad debt in about October 2001, and that as of January 12, 2004, the debt had not been satisfied (¶ 2.e.); that he owed approximately \$2,185.00 on an account placed for collection in about November 2001, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.f.); that he owed approximately \$1,464.00 on an account charged off as a bad debt in about November 2001 and that as of March 9, 2005, the debt had not been satisfied (¶ 2.g.); that he owed approximately \$867.00 on an account charged off as a bad debt in about November 2001, and that as of January 12, 2004, the debt had not been satisfied (¶ 2.h.); that he owed approximately \$854.00 on an account charged off as a bad debt in about December 2001, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.i.); and that he owed approximately \$1,086.00 on an account placed for collection in about December 2001, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.j.).

DOHA further alleged in the SOR that Applicant owed a debt of approximately \$852.00 to a creditor on an account charged off as a bad debt in about December 2001 and that as of January 12, 2004, the debt had not been satisfied (¶ 2.k.); that he owed approximately \$544.00 on an account charged off as a bad debt in about January 2002, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.l.); that he owed approximately \$1,140.00 on an account placed for collection in about January 2002, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.m.); that he owed approximately \$5,620.00 on an account placed for collection in about February 2002, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.n.); that he owed approximately \$355.00 on an account placed for collection in about February 2002, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.o.); that he owed approximately \$517.00 on an account charged off as a bad debt in about May 2002, and that as of January 12, 2004, the debt had not been satisfied (¶ 2.p.); that he owed approximately \$1,561.00 on an account charged off as a bad debt in about August 2002, that as of March 9, 2005, the debt had not been satisfied (¶ 1.q.); that he owed approximately \$4,951.00 on an account charged off as a bad debt in about August 2002, and that as of January 12, 2004, the debt had not been satisfied (¶ 2.r.); that he owed approximately \$1,203.00 on two loans defaulted in about September 2003, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.s.); that he owed approximately \$30.00 on a medical account placed for collection in about September 2002 and that as of March 9, 2005, the debt had not been satisfied. (¶ 2.t.); that he owed approximately \$107.00 on a medical account placed for collection in about December 2002, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.u.); and that he owed approximately \$1,697.00 on a medical account placed for collection in about December 2002, and that as of March 9, 2005, the debt had not been satisfied (¶ 2.v.).

An applicant who is financially overextended is at risk of having to engage in illegal acts to

generate funds. Directive ¶ E2.A.6.1.1. Applicant admitted all 22 allegations of financial delinquency in the SOR, raising security concerns under DC E2.A.6.1.2.1 and DC E2.A.6.1.2.3 of Guideline F. The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A.6.1.3.2. applies. If a person's financial delinquencies were largely caused by conditions beyond his control, then mitigating condition E2.A.6.1.3.3 might apply. While Applicant attributed at least some of his financial distress to a downturn in his business, he failed to

specify the nature and amount of his business losses. The downturn in Applicant's business, while unfortunate, does not explain or mitigate his long-standing financial difficulties and failure to pay or arrange payment of his personal and business-related debts. Thus, mitigating condition E2.A6.1.3.3. does not apply.

The record evidence does not establish that Applicant has sought counseling for his financial problems. His refusal to seek counseling to develop a plan to pay or satisfy debts associated with his debts does not demonstrate a good-faith effort to meet his financial obligations or to resolve or bring under control his financial delinquencies. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations in ¶¶ 2.a. through 2.v. of the SOR are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline F: 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
Subparagraph 2.i.: Against Applicant
Subparagraph 2.j.: Against Applicant
Subparagraph 2.k.: Against Applicant
Subparagraph 2.l.: Against Applicant
Subparagraph 2.m.: Against Applicant
Subparagraph 2.n.: Against Applicant
Subparagraph 2.o.: Against Applicant
Subparagraph 2.p.: Against Applicant
Subparagraph 2.q.: Against Applicant
Subparagraph 2.r.: Against Applicant
Subparagraph 2.s.: Against Applicant
Subparagraph 2.t.: Against Applicant
Subparagraph 2.u.: Against Applicant
Subparagraph 2.v.: Against Applicant

DECISION

In light of all of 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant also has a brother-in-law who is a citizen of Afghanistan residing in Australia.