

KEYWORD: Foreign Influence; Personal Conduct; Criminal Conduct

DIGEST: This 73-year-old linguist/translator for a defense contractor was born in Afghanistan in 1933. He left that country after the Soviet invasion and eventually came to the U.S. He has a wife and two children, all of whom are U.S. citizens. He has served as a translator for U.S. Special Forces and has received high praise from the Officer in charge. His closest family members are all in the U.S. and he has minimal personal and financial ties to Afghanistan. He considers himself to be a U.S. citizen only. His travel to Afghanistan is primarily on company/government business. Mitigation has been established. Clearance is granted.

CASENO: 04-06473.h1

DATE: 02/08/2006

DATE: February 8, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 04-06473

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 73-year-old linguist/translator for a defense contractor was born in Afghanistan 1933. He left that country after the Soviet invasion and eventually came to the U.S. He has a wife and two children, all of whom are U.S. citizens. He has served as a translator for U.S. Special Forces and has received high praise from the Officer in charge. His closest family members are all in the U.S. and he has minimal personal and financial ties to Afghanistan. He considers himself to be a U.S. citizen only. His travel to Afghanistan is primarily on company/government business. Mitigation has been established. Clearance is granted.

**STATEMENT OF THE CASE**

On June 20, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On June 29, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me on September 14, 2005. A Notice of Hearing was issued on November 1, 2005, setting the hearing for November 17, 2005. The Government offered two documents (Government's Exhibits (GX) 1 and 2). Applicant testified on his own behalf and offered six exhibits (Applicant's Exhibits (AX) A-F). The transcript was received on November 29, 2005.

## STATEMENT OF FACTS

Applicant is 72 years old. He is a Translator for a defense contractor. He was born in Afghanistan in 1933. His parents are deceased, but he has some relatives in Afghanistan. He married an Afghan woman in 1968. She resides with him in the U.S. and is also a U.S. citizen. He became a U.S. citizen in 1996, at which time he renounced his foreign citizenship and became an American only (GX 1).

The SOR contains four allegations, 1.a. - 1.d., under Guideline B (Foreign Influence); three allegations, 2.a. - 2.c.; under Guideline E (Personal Conduct); and one allegation, 3.a., under Guideline J (Criminal Conduct). In his response, Applicant admits some allegations and parts of allegations, and denies others, all with explanations. The admissions are accepted and incorporated as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of

Fact as to each SOR allegation:

### *Guideline B (Foreign Influence)*

1.a. - Applicant's brother is a citizen of Afghanistan and a resident of the U.S. The brother has been in the U.S. for 17 years (Tr at 29) and operates a snack shop in State A. He has retained an attorney to help him obtain U.S. citizenship (Tr at 34-36).

1.b. - Applicant, along with his family, owns real estate, a residence, in Afghanistan. The house is still in his father's name (Tr at 30). There are three brothers and three sisters. Four now reside in the U.S., one in Germany, and one in Great Britain (Tr at 39-41). The house is cared for and managed by a cousin (Tr at 37).

1.c. - The tenant in the family-owned house in Afghanistan was a citizen and resident of Afghanistan, who worked for the Afghanistan Ministry of the Economy. That ended some time ago. The present occupant is an employee of an international organization. He has what appears to be an American, Irish, or English name (AX F).

1.d. - Applicant traveled to Afghanistan on two or three occasions in 2003. These trips were primarily on company business. He no longer has any "close relatives" in Afghanistan (Tr at 32).

### *Guideline E (Personal Conduct)*

2.a. - Applicant denies any financial interests in Afghanistan (GX 1 (security clearance application (SCA) at Item 12, and Response to SOR). His deceased father owned a house in Afghanistan (Response) that apparently remains in the family. Applicant has documented that the house was recently rented to an American working for a international agency (AX F). There is no evidence that Applicant receives any money from the rental at present or that he will do so in the future. He testified that all six siblings had to agree to sell the house, but this has not yet happened (Tr at 44). The house may be worth about \$100,000 (Tr at 72), but there is no evidence as to when the house might be sold, how much the house might sell for, or what Applicant's possible 1/6 share might be, but the evidence suggests the amount would be relatively small in an American context (Tr at 45-47). He did not report the house because it belonged to his father and not to him (Tr at 53). His family's assets in the U.S. are about \$1,000,000 (Tr at 72). Considering all of the evidence, I find no evidence that Applicant deliberately falsified any material information relating to the house on his SCA.

2.b. - Applicant's last contacts with any representatives of the Afghan government occurred prior to 1981, when he left that country and moved to the U.S. During the 19 years prior to 1981, he was employed by the Afghan Planning Ministry, but has had no contact since 1981 (Response). The Government's evidence shows that Applicant answered "No" to Question 14 on his SCA - Contacts with a Foreign Government [with no time limitations stated]. The SCA (GX 1) is the only evidence the Government has offered, and it does not contain any suggestion that Applicant lied about anything material, specifically contact with a foreign official in 2003.

2.d. - Applicant did answer "No" to Question 16 [foreign travel within the previous seven years]. In his response to the SOR, Applicant admits he did visit his deceased father's house in Afghanistan in 2003. He did not include any additional information. His testimony indicates that his 2003 travel was the request of his employer, so that he could act as a translator for their business (Trat 47-48). He has also returned to Afghanistan on business as recently as 2005 (Tr at 48). He acted as a translator the U.S. Army's Special Forces (Tr at 57).

Under the language of Question 16, it is arguable that Applicant's travel was required to have been reported. If he was not traveling under "official" Government orders, he was certainly traveling on official Government-related business for his defense contractor employer. After observing Applicant during the hearing, I find his command of English to be good, but not sophisticated enough to be held to have a firm understanding of the semantics of the language of the SCA.

The transcript indicates that his daughter was assisting him in answering many of Department Counsel's questions and she had earlier helped him fill out many of the forms he had to complete to obtain the translator job (Tr at 66). In any case, there is no suggestion that he deliberately lied or had any intent to deceive.

I note that on his SCA, he omitted mention of two of his five siblings. His reason was that "I forgot, I make this mistake, I wasn't hiding this reason" (Trat 42). I find no reason to doubt his explanations.

*Guideline J (Criminal Conduct)*

3.a. - This allegation relates to those in paragraph 2, above. Because I find for Applicant as to SOR 2.a, 2.b., and 2.c., above, I also find no violation of 10 U.S.C 1001.

Applicant has made himself and his family a part of American society (Tr at 69-70). His daughter is a special assistant to the mayor of a large American city (Trat 6, 7).

He has clearly made considerable contributions to the U.S. defense effort, while placing himself at risk in doing so. His contributions (see AX F) have been noted and praised by a Military Intelligence officer with whom he worked (AX B. January 2003). He has received several Certificates of Recognition and/or Appreciation (AX C, AX D, and AX E).

**POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2. 1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving

those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security

concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

### CONCLUSIONS

Applicant is still going strong at 73. His specialized language skills have been of considerable value to his adopted country. He left Afghanistan when that country was invaded by the Soviet Unions, and he was not a communist. He has become an American with an American family and few ties to his native land. He has demonstrated consistently where his loyalties lie, and that is with his adopted country.

#### Guideline B (Foreign Influence)

Applicant has minimal emotional ties to Afghanistan, with his long residence here and that of most of his family. All of his close family and relatives are here. The risk of anyone in Afghanistan asking him to act against U.S. security interest is minimal and the likelihood of his instinctively rejecting any such efforts and reporting them to U.S. authorities is substantial.

*Guideline C* - "The Concern: A security risk may exist when [members of] an individual's

immediate family. . . are (1) not citizens of the United States or (2) may be subject to duress. These

situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure."

Disqualifying Condition - (1) "an immediate family member. . . is a citizen of, or resident or present in, a foreign country." DC 8 is not applicable in that any financial interest is indefinite and minimal, when compared to his assets in, and financial ties to, the U.S.

Mitigating Condition (MC) 1, "the immediate family members . . . , are not agents of a foreign power or are in a position to be exploited by a foreign power in a way that could force the individual to choose between his loyalty to the persons involved and the U.S." is applicable and persuasive. MC 5 is also applicable, as cited above.

Considering the totality of the evidence, the minimal ties to Afghanistan cited in the SOR establish a risk in the abstract,

in that the absence of problems in the past does not mean there will not be any in the future, but such absence must be taken into account with all other relevant evidence. There is no evidence suggesting that Applicant's relatives are agents of a foreign government. More importantly, even if they might be pressured to ask Applicant to act improperly, Applicant would not feel himself forced to decide where his loyalties lie and would act appropriately.

All of the evidence shows Applicant to be a man of mature judgment and integrity, and one who understands his responsibilities to his country, the United States. Based on the totality of the evidence, I conclude that Applicant does possess the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

*Guideline E* -The Concern: that lying about material matter on a security clearance application involves questionable judgment, unreliability.

No Disqualifying Conditions apply. The Government has not established any deliberate falsification of answers on Applicant's security clearance application.

*Guideline J* - The Concern: that a history or pattern of criminal conduct creates doubt about a person's judgment, reliability, or trustworthiness.

No Disqualifying Conditions apply. The Government has not established any deliberate falsification of answers on Applicant's security clearance application and, therefore, no criminal violations.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Guideline E (Personal Conduct) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. For the Applicant

Guideline J (Criminal Conduct) For the Applicant

Subparagraph 3.a. 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**