

DATE: October 20, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06964

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 40-year-old naturalized United States citizen from Afghanistan. Applicant is employed by a federal contractor as a translator. Applicant's mother, four sisters and three brothers are all citizens of Afghanistan. His four sisters and one brother reside there. Applicant did not offer any information to mitigate the foreign influence security concerns. Clearance is denied.

STATEMENT OF CASE

On May 9, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B, foreign influence.⁽²⁾

In a sworn statement dated May 25, 2005, Applicant responded to the SOR allegations, admitting all of them. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on June 13, 2005. The FORM was received by Applicant on June 25, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. No information was submitted by Applicant. The case was assigned to me on October 7, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and statements, I make the following findings of fact:

Applicant is a 40-year-old translator who has worked for a federal contractor since 2003. Applicant was born in Afghanistan and became a naturalized United States citizen in 1996. Applicant is married to an American citizen and has three children.

Applicant's mother is a citizen of Afghanistan and currently resides with him. She holds an immigration green card. Applicant has four sisters and three brothers. The sisters and one of his brothers are all citizens and residents of Afghanistan. Another brother is a citizen of Afghanistan and currently resides in Brussels, Belgium. The third brother is a citizen of Afghanistan and currently resides in Germany.

Applicant traveled to Afghanistan from April 2003 to October 2003. He did so while working for a Language Resource company and provided translation services for United States military forces serving there. While in Afghanistan, Applicant visited family members. No other information was provided by Applicant.

Afghanistan retains remnants of the former Taliban regime and the terrorist organization al-Qaida.⁽³⁾ There is a continuing threat of terrorist actions and an ongoing threat to kidnap United States citizens throughout the region.⁽⁴⁾ American citizens could be targets or placed at risk by unpredictable local events.⁽⁵⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole Guideline B, foreign influence, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁶⁾ The government has the burden of proving controverted facts.⁽⁷⁾ The burden of proof is something less than a preponderance of evidence.⁽⁸⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

No one has a right to a security clearance⁽¹¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹²⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹³⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁴⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B-Foreign Influence is a concern because 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 obligations are not citizens of the United States or 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 interest 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 would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline B.

Based on all the evidence, Foreign Influence Disqualifying Condition (FI 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*) applies. Applicant's immediate family members, including his mother, four sisters and three brothers are all citizens of Afghanistan. The four sisters and one brother are also residents of Afghanistan. Applicant visited his family when he was in the country in 2003.

No information was provided by Applicant to mitigate the security concerns regarding his immediate family who are all citizens of Afghanistan and some who reside there. Applicant failed to provide information about any contact he may have with his relatives; whether it is casual and infrequent; what, if any, connection his relatives in Afghanistan may have with the government; and any other relevant facts that may mitigate the security concerns raised by his family ties. Without specific and detailed information I find no mitigating conditions apply. Therefore, I also find Applicant has failed to meet his burden and mitigate the security concern regarding foreign influence.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered the whole person and I find Applicant has failed to mitigate the security concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided against Applicant.

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 Foreign Influence (Guideline B) AGAINST THE APPLICANT

Subparagraph 1a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the 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 a security clearance to Applicant. Clearance is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The SOR reflects an incorrect spelling of Applicant's first name. It is correctly spelled in the caption.
3. Item 5.
4. *Id.*
5. *Id.*
6. ISCR Case No. 96-0277 (July 11, 1997) at 2.
7. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
8. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
9. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
11. *Egan*, 484 U.S. at 531.
12. *Id.*
13. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
14. Executive Order 10865 § 7.