

DATE: January 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08155

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The fact that one of applicant's sons is a citizen and resident of Afghanistan, and the other son is a citizen of Afghanistan residing in the United States, does not leave applicant vulnerable to coercion or pressure. Clearance is granted.

STATEMENT OF THE CASE

On November 23, 2004, 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 administratively reissued on April 20, 1999), 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 clearance should be denied or revoked.

Applicant responded to the SOR in writing on December 5, 2004. The case was assigned to the undersigned on November 30, 2005. A Notice of Hearing was issued on December 21, 2005, and the hearing was held on January 12, 2006. The transcript was received on January 23, 2006.

RULINGS ON PROCEDURE

At the hearing, Department Counsel moved to amend the SOR by (1) deleting Allegations 3a and 3b and (2) changing the date in Allegation 3c from July 1, 2003 to October 17, 2003. Applicant did not object, and Department Counsel's Motion was granted (TR 57-60).

FINDINGS OF FACT

Applicant is a 65 year old employee of a defense contractor.

Applicant was born and raised in Afghanistan. He served in the Afghan military for 20 years. When the Soviet Union invaded Afghanistan, applicant refused to do what they wanted him to do so they jailed him for two years. When he was released, he and his family (wife and three children) fled to Pakistan. After several months in Pakistan, they made their way to a European country. Shortly thereafter, in approximately July 1981, they moved to the United States. Applicant has lived here since then. In 1999, he became a United States citizen (Exhibit 2). His wife became a United States citizen before he did.

As noted above, applicant has three children. His daughter is a United States citizen living in the United States. His two sons are still Afghan citizens but have United States green cards. One lives in the United States. The other son, who came to the United States when he was eight years old, returned to Afghanistan about a year ago. He made the move over the objection of applicant and his wife who told him it was too dangerous. They also told him, in essence, that if he insisted on going and something bad happened, he was on his own.

Applicant's "no" response to Question 33 on the October 17, 2003 Security Clearance Application (SCA) was false because he had filed for bankruptcy during the previous seven years. However, the evidence establishes that applicant did not intentionally falsify the SCA (TR at 61-63, 72-74).

Exhibits C, D, E, F, and G are letters and certificates of appreciation from people who have worked with applicant while he supported Operation Enduring Freedom. These exhibits establish that applicant is a hard working and dedicated individual who has done valuable work for the United States government.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's two sons are citizens of Afghanistan, and that one of them resides there. These facts require application of Disqualifying Condition E2.A2.1.2.1 (*an immediate family member . . . is a citizen of, or resident or present in, a foreign country*).

Based on the evidence presented, I conclude that applicant's sons are not agents of Afghanistan, or in a position to be exploited by Afghanistan in a way that could force applicant to choose between loyalty to them and loyalty to the United States. I further conclude that applicant is a reliable and trustworthy individual who is loyal to the United States, and that in the unlikely event pressure was exerted upon him to compromise classified information, he would resist it, and would report the incident to the proper authorities. Based on the foregoing, Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member(s) . . . in question 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*) is applicable, and Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that applicant served in the Afghan military for 20 years. This fact requires application of Disqualifying Condition E2. A3.1.2.3 (*military service . . . for a foreign country*). Since this service occurred before he immigrated to the United States and became a United States citizen, he qualifies for Mitigating Condition E2.A3.1.3.2 (*foreign military service occurred before obtaining United States citizenship*). Given this mitigating Condition, and the fact that applicant has shown a clear preference for the United States during the past 24 years, Guideline C is found for applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

GUIDELINE C: FOR THE APPLICANT

GUIDELINE E: 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.

Joseph Testan
Administrative Judge