

DATE: November 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12363

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated foreign influence security concerns over his family ties in Afghanistan. Only a brother, an uncle, a cousin, and his wife's family remain citizens of Afghanistan and reside there. Applicant has strong ties to the U.S. and has demonstrated working as a translator for U.S. interests in Afghanistan that he can and will put U.S. security interests ahead of his family ties. Applicant's assurances that he would put U.S. interests over any Afghani family ties are supported by his positive character and work assessments. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) [\(1\)](#) to the Applicant on July 26, 2005. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant him access to classified information. The SOR alleges specific concerns in paragraph 1 over foreign influence (Guideline B). Applicant replied to the SOR allegations in an Answer notarized on August 24, 2005, and requested a hearing.

After Department Counsel stated the case was ready to proceed on October 18, 2005, the case was assigned to me on the same day. On October 18, 2005, DOHA issued a Notice of Hearing and set this case to be heard on November 8, 2005, in a city near where Applicant lives and works. At the hearing the government presented two exhibits (Exhibits 1-2), which were admitted into evidence without objection, and called one witness. (TR 19-24) Department Counsel's request that administrative notice (AN) be taken of the information contained in Exhibits I -III was granted as Applicant did not object. (AN I-III) Applicant offered four exhibits (Exhibits A-D), testified and called one witness. As Department Counsel did not object, Exhibits A-D were admitted into evidence. (TR 25-28) The transcript (TR) was received on November 23, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I

make the following additional Findings of Fact:

Applicant, 54 years old, worked overseas as a translator for a defense contractor (Employer #1) who is located in State #1 from May 2003 to July 2005 with an interim Secret clearance. When the SOR was issued in July 2005, his interim clearance was withdrawn. He returned to the U.S. in August 2005; however, his luggage and his gear remain in Afghanistan. He would like to return to work for Employer #1. He currently works as a self-employed cab driver as he did from 1997 to 2003 before he joined Employer #1. (Answer; Exhibits 1, 2, TR 53-56, 56-58)

Applicant was born in Afghanistan. He became a naturalized U.S. citizen in January 1998 in State #2. He holds a U.S. passport issued in April 1998. From January 2002 to January 2003 Applicant attended college in State #2. (Exhibits 1, 2)

Applicant sponsored his mother and sister to come to the U.S. in 98 to avoid the Taliban. His father had left Afghanistan for Germany in 1990 during the Afghanistan and Russian conflict. The parents were later reunited in the U.S. (Exhibit 2) Both Applicant's mother and father resided in State #2. His father became a naturalized U.S. citizen in 2001 and died in August 2005. His mother remains a resident alien of the U.S. as she is not fluent in English. Applicant is one of seven siblings. One sister born in 1948 is a naturalized U.S. citizen who is married to a naturalized U.S. citizen; she is a resident of State #2 but has also worked as a linguist/translator for Employer #1. One brother born in 1968 in Afghanistan is a resident alien of the U.S. and lives with his parents and sister in State #2. He is a full time student. Another brother, born in Afghanistan, currently resides in State #3 and plans to become a U.S. citizen. (Exhibit 2; TR 31, 37-40)

Foreign Influence

Applicant married in August 1999 in Pakistan, but has not returned to Pakistan. (Answer; Exhibit 1; TR 53, 64) (SOR 1.j.) His wife came to the U.S. in 2000 after they were married. She lives in the U.S. and is a permanent resident. Her green card expired in 2004 when Applicant was out of the country. As his wife did not understand the language, she did not understand the immigration notice. When he returned, he filed the proper paperwork and her permanent resident status has been restored. She has a social security card and plans to become a U.S. citizen as soon as the 5-year time limit is up. (Answer; Exhibit 2; Exhibits A, B; TR 47-48, 50-51) (SOR 1.a., 1.b.) Applicant and his wife have a daughter who reside in State #2. Applicant returned to the U.S. for a vacation in March 2004 and again in August 2004 for a vacation. (Exhibit 2)

Applicant's brother who remains a citizen and resident of Afghanistan is unemployed. He is married and has five children. This brother returned to Afghanistan in 2002 to rebuild the family home. Applicant and other members of the family helps to provide financial support to this brother. Applicant provides \$200 per month. Applicant only saw him twice and called him two or three times while he was assigned to Afghanistan as Applicant's U.S. work assignment was far from where his brother lived in their father's house. Anytime Applicant wanted to see his brother he got approval from his U.S. military superiors. He has spoken to this brother only two or three times since he returned to the U.S. (Answer; Exhibits 1, 2; TR 38-39, 42-43, 44-45, 51-52, 57-59, 64-65) (SOR 1.c.)

One sister, who is 60, is a homemaker, a citizen of Afghanistan, and a resident of Germany with her German husband. Applicant speaks to her once a month. Another sister is also a citizen of Afghanistan and a resident of Germany with her German husband. She did possess a green card from the U.S. since she lived here in 2001. However, after she went to Germany with her husband for her honeymoon, she was denied re-entry into the U.S. in 2004 as she only had a green card and an Afghan passport. Applicant speaks to his sisters twice a month. (Answer, Exhibits 1, 2; TR 38, 45-47 52-53, 59-60) (SOR 1.d. and 1.e.)

Applicant has other relatives in Afghanistan who are citizens and residents: his mother-in-law, a homemaker, and father-in-law, who owns a restaurant (SOR 1.g). While Applicant was assigned in Afghanistan he visited them twice; he always got permission for his visits. His wife speaks to her parents weekly, and he speaks to them twice a month. He has an uncle, a retired tailor, and a cousin, who are citizens of Afghanistan, and reside there. He did not see his uncle while he was in Afghanistan. (SOR 1.h.). This cousin in Afghanistan is employed by the Afghanistan government in the Ministry of Women's Affairs. (SOR 1.i.) He only saw his cousin once while he was assigned in Afghanistan. He has not talked to either his uncle or cousin by telephone. (Answer; Exhibits 1, 2; TR 33, 45-4660-63)

Given Applicant's extensive ties to the U.S., I find it is unlikely he would yield to pressure if any of these relatives were coerced by the government of Afghanistan, which is in transition. The country made "great strides towards building democracy and rebuilding the country in 2004." They ratified a new national constitution that embraced democracy and pluralism in the context of Afghan and Islamic traditions. They have an increasingly effective Afghan National Army. The government has reversed a long legacy of serious human rights abuses under the previous regime, but serious problems remain. (AN I-III)

References

Applicant's supervisor, a commanding captain, recommended him as a "highly skilled, dedicated, and energetic interpreter." This U.S. captain viewed Applicant as "invaluable in the War On Terrorism In Afghanistan." He translated for American medical personnel and Afghani locals; he was invaluable in treating hundreds of people. He "performed most admirably while bridging the language barrier amidst the chaos of treating dozens of severe trauma injuries." Also Applicant participated in interrogations of the Anti-Collation Militia (ACM) and gathered information for detained ACM to develop a greater understanding of ACM activities to further support the operations. Applicant directly contributed to the success of US/Afghan forces in the province where he was assigned. (Exhibit C)

Another individual who worked with Applicant for three months found him "an extremely valuable asset" to the medical team. Applicant was on call 24 hours a day and never failed to respond to the call with a smile any time of the day or night. Applicant's knowledge of the local language enabled the U.S. to succeed in the mission. (Exhibit D)

Applicant's brother testified about Applicant's desire to assist the U.S. military in Afghanistan. Even when their father died in August 2005, Applicant did not return for the burial service because his security clearance was a priority for him. While Applicant was serving in Afghanistan, he would not even tell his wife where he was assigned because of security precautions. His brother explained that their family belonged to the Hazara ethnic group who suffered under the Taliban and under Al-Qaeda; so Applicant's family supports the Americans being in Afghanistan. His brother stated that Applicant's goal is to help "the American officers or soldiers to understand the language or the mentality or the culture" in Afghanistan. This brother has a permanent resident card and will apply to be a U.S. citizen in September 2006. (TR 29-36, 36-37, 37-39, 41-43, 48-49)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline B - Foreign Influence

***The concern:* 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 obligation are: (1) not citizens of the United States or (2) 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.**

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the

national interest. In reaching a fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

Because of Applicant's ties to his family who remain in Afghanistan and his wife's family in Afghanistan, the government raised foreign influence concerns under disqualifying conditions (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; and E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

While I have seriously considered these security concerns and the document submitted for administrative notice which raises security concerns over Afghanistan's record, I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. Applicant mitigates⁽²⁾

the Government's security concerns over possible foreign influence under MC 1 as none of his immediate family are agent's of a foreign power; furthermore, the U.S. is actively working in partnership in Afghanistan to promote and establish democratic principles. While under MC 3 his ties are not casual and infrequent, he does meet the considerations detailed under the whole person analysis. In evaluating his conduct, I considered the following Adjudication Process factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Looking at all of these circumstances, I conclude Applicant has overcome foreign influence security concerns. Given his strong and lengthy ties to the U.S. since he became a U.S. naturalized citizen in 1998, there is limited potential for coercion, exploitation or duress. There is no evidence that since Applicant came to the U.S. that the government of Afghanistan or any other foreign power has tried to exploit his relationship with his relatives in Afghanistan even though he worked there and had limited contact with them in his 2003 to 2005 assignments. Indeed, Applicant's knowledge of the local language enabled the U.S. to succeed in the mission in Afghanistan. He always asked permission of his military supervisor before he visited his relatives and followed the regulations. Applicant was careful to follow all of the security guidelines in Afghanistan. Even though his family in the U.S. wanted to know where he was working in Afghanistan, he did not tell them in order to comply with security regulations. He did not attend his father's funeral in Afghanistan as his priority was his security clearance. Further, he is highly regarded as a translator and contributed to the success of the U.S.-Afghan missions while he worked there. Applicant's supervisor, a commanding captain, recommended him as a "highly skilled, dedicated, and energetic interpreter." Applicant was "invaluable in the War On Terrorism In Afghanistan." Afghanistan is in transition. Thus, under E.2.2.1.8., there is little potential for pressure, coercion, exploitation, or duress.

Under E2.2.1.2., since he came to the U.S., he has had limited contact with his family in Afghanistan except for his work assignments there in 2003-2005 when his expertise as a translator allowed him to be of service to U.S. interests. While some of his birth family remain citizens and residents of Afghanistan, his father, mother, sister, and two brothers came in the U.S. legally. His wife is in the U.S. legally and plans to become a citizen. Both his brother and uncle in Afghanistan as well as his wife's parents have no ties to the government. Applicant's financial support for his brother is minimal. While his cousin works for the Afghan government, her focus is on women's issues. Further, he had limited contact with her and only saw her once in 18 months. Thus, under E.2.2.1.7., there is less motivation for pressure or coercion on family members. In addition, Applicant's family is from the Hazara ethnic group that suffered under the Taliban, and Applicant and his family are supportive of the U.S. involvement in Afghanistan. Indeed, Applicant wants

to return to work with the U.S. in Afghanistan as he played and wants to continue to play a key role in supporting U.S. efforts there. Under E2.2.1.2., he has not sought to continue any ties to Afghanistan except to use his expertise as a translator to advance the interests of the U.S. Significantly, all of Applicant's financial ties are in the U.S. When he worked in Afghanistan, he put the interests of the U.S. ahead of his commitment to his birth family and country of birth. He followed all regulations when he went to see his family.

In addition, Applicant's colleagues established that Applicant has a favorable work history. In his work Applicant is assessed as reliable as he does excellent work. Thus, I conclude given his deep ties to the U.S. with his immediate family here (his wife and child, mother, sister and two brothers) that it is unlikely that he could be exploited by coercive or non-coercive means by the government in Afghanistan in a way that could force Applicant to choose between loyalty to his family in Afghanistan and his loyalty to the United States. Under E2.2.1.5., he would reliably resist any pressure tactics. Applicant credibly established he would never allow any pressure to compromise his integrity and his support for the U.S. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable.

Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these circumscribed family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant. 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 trustworthiness and fitness for access to classified information. Thus, the whole person concept recognizes the importance of viewing a person by the totality of their acts. Applicant has met the heavy burden to mitigate these foreign influence security concerns. Hence, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.j. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5220.6, dated January 2, 1992 (Directive).
2. E2.A2.1.3 Conditions that could mitigate security concerns include: E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.