

DATE: April 26, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03846

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

B. Daniel Lynch, Attorney At Law

SYNOPSIS

The Applicant's brother is the Chief of Administration for the Ministry of Foreign Affairs in Afghanistan. The Applicant has consistent and regular contact with his brother and this raises a security concern. Clearance is denied.

STATEMENT OF THE CASE

On October 31, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR on November 27, 2005, and December 17, 2005, notarized respectively on November 28, 2005 and December 19, 2005, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 23, 2006. A notice of hearing was issued on February 8, 2006, scheduling the hearing for March 9, 2006. At the hearing the Government presented six exhibits. The Applicant presented eight exhibits and called six witnesses. He also testified on his own behalf. The official transcript (Tr.) was received on March 24, 2006.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 48 years of age and is divorced. He is employed as an interpreter or linguist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible

for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Afghanistan. After an invasion by a Russian Communist regime, in 1979, he left Afghanistan as a refugee and walked through the desert to Iran. After four months in Iran, he purchased a fake passport, traveled to Turkey, and then to Germany. He stayed in Germany for about nine months and then came to the United States in 1980. He began working for a restaurant where he worked for eighteen years. In October 1993, he became a United States citizen. The Applicant is grateful to the United States for the freedom and opportunities it has given him.

The Applicant has a brother who is a citizen and resident of Afghanistan. He is the Chief of Administration for the Ministry of Foreign Affairs in Kabul, Afghanistan. His brother has a degree in political science and law from a college in Afghanistan. In 2002, he started working for the United Nations in Afghanistan, and it was not long after that when he became the Chief of Administration for the Ministry of Foreign Affairs. The Applicant is not certain whether the position was a political appointment.

In 2002, the Applicant was hired by a defense contractor to work as an interpreter to assist the United States Army in their mission in Afghanistan. The Applicant worked in Afghanistan from December 2002 to April 2004. The Applicant went to lunch and dinner with his brother on two occasions while he was working in Afghanistan. Since the Applicant returned to the United States, the Applicant's brother has visited him in the United States once every six or seven months. The Applicant explained that his brother lived in the United States with a green card from 1979 until 2002, when he returned to assist in the formation of the new government in Afghanistan. His wife and daughter reside in the United States.

The Applicant explained that sometimes while he is in Afghanistan he feels safe, other times he does not. He states that he feels that he is a real stranger there because the country has changed so much.

Six witnesses testified on behalf of the Applicant that include several long time family friends and family members, all of whom have a very high respect for the Applicant. The Applicant is considered to be a most considerate, kind, honest, reliable, and sound individual.

Letters of recommendation from his employer, professional colleagues and military personnel who have worked with the Applicant in Afghanistan attest to his sound judgment, discretion, reliability and team efforts. He has achieved a high level of respect as an interpreter. They consider him a great American and is highly recommended for a security clearance. (See Applicant's Exhibits A, B, C, D, F, G and H).

Several photographs of the Applicant and his coworkers in Afghanistan further demonstrate the comradery between them. (See Applicant's Exhibit E).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
3. relatives, cohabitants, or associates who are connected with any foreign government.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant

presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

There is strong mitigating evidence in this case. The Applicant has achieved the American dream. He has obtained his citizenship, is obviously well liked, very professional and has achieved a high level of respect from his colleagues. However, the Applicant has close ties with his brother who is a high level government official in Afghanistan. His brother is the Chief of Administration for the Ministry of Foreign Affairs in Afghanistan. The Applicant's brother is closely connected with the Afghanistan government. The Applicant and his brother have consistent and regular contact with each other whether in Afghanistan or in the United States. This by itself raises an unacceptable risk. Under Guideline B, Disqualifying Conditions (1) *An immediate family member, or 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 (3) relatives, cohabitants, or associates who are connected with any foreign government* applies. Under the particular facts of this case, none of the mitigating conditions are applicable. The possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. Notwithstanding the fact that Afghanistan is a close ally of the United States, current official policy does not allow me to grant this Applicant a security clearance. I find that the Applicant is vulnerable to foreign influence under. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge