

KEYWORD: Foreign Influence

DIGEST: The Applicant came to the U.S. as a refugee in 1981, fleeing the Soviet occupation of Afghanistan. He was naturalized in 1989. One of the Applicant's sons is a citizen of Afghanistan, but resides in the U.S. He is seeking naturalization. Another of the Applicant's sons, a U.S. citizen, resides part of the year in Afghanistan. He works for a company that provides logistics for the U.S. Army. The Applicant's daughter, a U.S. citizen, resides in the United Arab Emirates (UAE). She and her American husband own a company that does business in the UAE. The Applicant has two elderly siblings, a step-mother, and a step-sister, who are citizens of and reside in Afghanistan. None of the Applicant's foreign relatives are connected to any foreign government, nor are they the subject of coercion vis-a-vis the Applicant. Mitigation is shown. Clearance is granted.

CASENO: 05-04146.h1

DATE: 01/11/2006

DATE: January 11, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04146

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant came to the U.S. as a refugee in 1981, fleeing the Soviet occupation of Afghanistan. He was naturalized in 1989. One of the Applicant's sons is a citizen of Afghanistan, but resides in the U.S. He is seeking naturalization. Another of the Applicant's sons, a U.S. citizen, resides part of the year in Afghanistan. He works for a company that provides logistics for the U.S. Army. The Applicant's daughter, a U.S. citizen, resides in the United Arab Emirates (UAE). She and her American husband own a company that does business in the UAE. The Applicant has two elderly siblings, a step-mother, and a step-sister, who are citizens of and reside in Afghanistan. None of the Applicant's foreign relatives are connected to any foreign government, nor are they the subject of coercion vis-a-vis the Applicant. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On September 2, 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, 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.

Applicant filed an Answer to the SOR on September 23, 2005.

The case was received by the undersigned on December 15, 2005. A notice of hearing was issued that same day, and the case was heard on December 22, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on January 9, 2006. The issues raised here are whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 64 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline B - Foreign Influence

The Applicant came to the U.S. as a refugee in 1981, fleeing the Soviet occupation of Afghanistan (TR at page 20 line 8 to page 21 line 21). He was naturalized as an American in 1989 (Government Exhibit (GX) 1 at page 1).

1.a.~1.f. One of the Applicant's sons is a citizen of Afghanistan, but resides in the U.S. (TR at page 21 line 18 to page 22 line 13). He is seeking American citizenship through naturalization (*Id*, and Applicant's Exhibit (AppX) A). His first appointment with the U.S. Citizenship and Immigration Service was in September of 2005 (*Id*). Another of the Applicant's sons, a U.S. citizen, resides part of the year in Afghanistan (TR at page 24 line 4 to page 25 line 10). He works for a company that provides logistics for the **U.S. Army** (*Id* and AppX B at page 4). The Applicant's daughter, a U.S. citizen, resides in the UAE (TR at page 22 line 17 to page 24 line 3). She and her American husband own a company that does business in the UAE (*Id*, and AppX B at pages 2~3). The Applicant has two elderly siblings, an 80 year old step-mother, and step-sister, who are citizens of and reside in Afghanistan (TR at page 27 line 16 to page 28 line 3, and at page 28 line 24 to page 29 line 14).

1.g.~1.i. The Applicant traveled to Pakistan in 1999, to visit his step-mother and a brother, who had fled Afghanistan, which was under the control of the Taliban (TR at page 32 line 12 to page 33 line 3). He also traveled to Afghanistan in 2002 to visit his parents (*Id*). Most recently, the Applicant worked as an interpreter for the **U.S. Army** in Afghanistan from May to November of 2003, and again from January 2004 to February of 2005 (TR at page 30 line 12 to page 31 line 6).

Mitigation

Those who know the Applicant think most highly of him (AppX C).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.

- b. Frequency and recency of the conduct.

- c. Age and maturity of the applicant.

- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.

- e. Absence or presence of rehabilitation.

- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a 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.

The Government must make out a case under Guideline B (Foreign Influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an 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 disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. 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

The Applicant came to the U.S. in 1981, as the Soviet Union occupied the country of his birth. Most recently, he returned to a free Afghanistan, as an American citizen, working as a contractor for the U.S. Army. However, the Applicant's step-mother, two siblings, and a step-sister are citizens of and reside in Afghanistan. He also has an American daughter working in the UAE. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . or present in, a foreign country." None of the Applicant's immediate family member is connected with any government, and there is no evidence that their presence in Afghanistan or the UAE can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation (TR at page 35 line 16 to page 36 line 12). The first mitigating condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States." Mitigation is shown. Guideline B is found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged Foreign Influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge