



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 07-13073
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

August 29, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (e-QIP), on November 10, 2005. On March 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guideline B. The action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 9, 2008 and requested a hearing before an administrative judge. In his answer he admitted four (SOR ¶¶ 1.a., d., e., and g.) and denied the other five of the nine allegations in the SOR. Department Counsel was prepared to proceed on May 22, 2008. I received the case assignment on May 27, 2008. DOHA issued a notice of hearing on June 6, 2008, for a hearing on June 16, 2008. I convened the hearing as scheduled.

At the hearing, the government offered two exhibits (Exhs 1 and 2) that were admitted in evidence without objection. The government also offered two additional exhibits (Exhs. 3 and 4) in rebuttal to Applicant's testimony and they were admitted. Applicant submitted ten exhibits (Exhs. A-J) which were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 24, 2008.

Procedural Rulings

Notice of Hearing

The hearing notice was dated less than 15 days before the hearing date. I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to the 15 days notice and indicated he was ready to proceed (Tr. 9).

Administrative Notice

The government requested that administrative notice be taken of seven official U.S. government documents relating to Afghanistan and security concerns of the U.S. arising from terrorism. With no objection from Applicant, the documents were accepted for notice.

Findings of Fact

Applicant is a 38-year-old Afghan male who has an offer of employment from a government contractor to provide services as a translator for the U.S. military in Afghanistan. He now works as a production manager for a private company where he supervises 45 employees.

Applicant came to the U.S. in 1989 when he was 18 years old with his family. He emigrated from Pakistan where he had been in a school since 1987 sponsored by the U.S. government for children of Afghan forces working against the occupation by the former Soviet Union. He became a U.S. citizen in 2002.

Applicant has several relatives living in Afghanistan or with familial connections there. His wife lives in the U.S. but is a citizen of Afghanistan. She recently has applied for U.S. citizenship. (SOR ¶ 1.a.). She has several family members residing there including two underage siblings. She maintains contact with her parents and other

relatives on a regular basis. Applicant's mother was a citizen of Afghanistan but is now a U.S. citizen residing in the U.S. with him (SOR ¶ 1.b.). He has contacts with his wife's relatives but less frequently than she.

Applicant's father is a professor with a Ph.D degree who emigrated to the U.S. in the mid 1980's and taught a medical subject at a U.S. university. He was active in Afghanistan fighting against the Soviets and returned to Afghanistan in 2002 after the collapse of the Taliban. He left his family in the U.S., remarried, and now teaches at an Afghan university (SOR ¶ 1.c.). Applicant and others in the family are not on good terms with him and have little contact with him.

Applicant's mother-in-law, and father-in-law are citizens of and residing in Afghanistan where they teach lower grades in a school. He has three sisters-in-law who are from Afghanistan. One is a U.S. citizen living in the U.S. The second lives in Canada and is applying for Canadian citizenship. The third lives in Germany and is applying for German citizenship. These in-laws are subjects of two allegations (SOR ¶¶ 1.d. and 1.e.).

Applicant made two statements to investigators during his security investigation concerning his friendship or acquaintance with an influential leader who was fighting the Taliban in Afghanistan. This information was not true, as he has acknowledged (Tr.46). However, he did not claim to be a relative of the person or involved with his organization as was alleged. (SOR ¶¶ 1.h. and i.). The person in question was an acquaintance and colleague of Applicant's father.

Applicant traveled to Pakistan in 1990 and 1991 to help his sister and her two children gain visas to the U.S. All three are now U.S. citizens living in the U.S. In 2002 he traveled twice to Pakistan. The first trip was to accompany his sister-in-law for the funeral of her sister, since her husband could not accompany her. The second trip was to accompany his wife to the U.S. because she had just received a visa to travel to the U.S. In 2005 he traveled to Afghanistan to attend the wedding of a sister-in-law and to explore business opportunities for his present employer who does work in the Middle East. No business sources were developed.

Applicant does not have a security clearance but desires one so that he can return to his country of origin and make a contribution to the U.S. national defense by working for the U.S. military as a translator for at least one year. His interest in taking the new job in Afghanistan stems from doing work on two occasions as a translator for the Army in military exercises in the U.S. in 2007. He did this work while on vacation from his regular job. He was highly regarded for his work and commended by the commanding officer of the unit he worked with (Exh. D) and given a citation for his work with the units (Exh. C).

Applicant's wife is studying to be a medical assistant. They have one three-year-old daughter. His annual salary from his current employment is approximately \$60,000. He is highly regarded by his present employer for his skills and dedication (Exhs. F-J).

His salary from his prospective job would be approximately the same as from his present employment.

The U.S. military is heavily involved in combating insurgent forces in Afghanistan and it is an unstable country. Large parts of it are under the control of Taliban insurgents and it is a dangerous part of the world where there are human rights abuses and acts of terrorism. The documents that were admitted for administrative notice describe the situation as it is found there in official U.S. government sources (Exhs. I-VII).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as "the whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk

the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) listing multiple prerequisites for access to classified or sensitive information.

Analysis

Guideline B, Foreign Influence

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism

Conditions under Guideline B that could raise a security concern and may be disqualifying include contact with a foreign family member who is a citizen of, or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion (AG ¶ 7a). A second condition that could raise a security concern include connections to a foreign person, group, government, or country that create potential conflict of interest between the individual and desire to help a foreign person by providing information (AG ¶ 7(b)).

Based on the evidence of record, including Applicant’s acknowledgment of family members living abroad, and his statement to investigators, the Government established a basis for concern over foreign influence. The Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Mitigating conditions (MC) that might be applicable are a determination that the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those persons in that country are such that is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual group or government and the interests of the U.S. (AG ¶ 8a). A second possible MC is if the contacts with foreign persons is so infrequent to be deemed casual (AG ¶ 8c). However, by virtue of the close relationships of the foreign family members, Applicant's contacts, though infrequent, cannot be deemed casual. Also, if the individual has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. (AG ¶ 8b).

The fact that some relatives live in Afghanistan, and the history of that country as to military activities makes it a heightened security risk. U.S. troops are fighting Taliban forces in Afghanistan. They need translators for their operations and Applicant seeks to offer a service. He has performed such services well in the military exercises in which he participated as concluded by the commander of the unit with which he served.

However, the fact that he exaggerated contacts with a significant Afghan leader who was helping U.S. forces, and the fact that he wants the clearance to work possibly for only one year creates some security concern that is not overcome by his desire to serve his country. While it is commendable that he wants to serve the military in a needed capacity, it is not clear to me that his motivation is sufficiently strong as to overcome the security issues raised by the fact that he has close relatives who live in Afghanistan. The travels are of lesser concern. His service as a translator for the U.S. government could well be performed in the U.S. for agencies that need the service here without the risk of sending him to a country where family members reside. The mitigating conditions are not applicable to the facts as presented by Applicant.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The security concerns do not arise because of any misconduct by Applicant but solely because of the family members living in a country with security concerns. While his motivation for seeking a security clearance is commendable, his exaggeration to the investigator and his desire to perform work abroad for possibly only a short period leaves doubts as to the wisdom of granting a clearance in these circumstances.

Applicant has not mitigated the security concerns arising from these issues of foreign influence.

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, Guideline B: AGAINST APPLICANT

- Subparagraph 1.a.: For Applicant
- Subparagraph 1.b.: For Applicant
- Subparagraph 1.c.: Against Applicant
- Subparagraph 1.d.: Against Applicant
- Subparagraph 1.e.: For Applicant
- Subparagraph 1.f.: Against Applicant
- Subparagraph 1.g.: Against Applicant
- Subparagraph 1.h.: For Applicant
- Subparagraph 1.i.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Access to classified information is denied.

CHARLES D. ABLARD
Administrative Judge