



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



In the matter of:)
)
) ISCR No. 08-00662
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: T. Lawrence Hicks, Esq.

August 28, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record as a whole, eligibility for access to classified information is granted.

History of Case

On March 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). 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 2, 2009, and requested a hearing before an administrative judge. DOHA assigned the case to me on June 4, 2009, and issued a Notice of Hearing on June 16, 2009, scheduling the hearing for July 9, 2009. I convened the hearing on said date. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence, which were admitted in evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A and B into evidence, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 20, 2009.

Procedural and Evidentiary Rulings

Motion to Amend

During the hearing, Department Counsel moved to amend Paragraph 1.c of the SOR to read as follows: "Your half-sister is a citizen of Afghanistan and a resident of Pakistan." Applicant had no objection. The motion was granted. (Tr. 49)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Afghanistan and Pakistan. The request and the attached documents pertaining to Afghanistan are included in the record as Afghanistan Hearing Exhibits (AHE) I through VIII. The request and the attached documents pertaining to Pakistan are included in the record as Pakistan Hearing Exhibits (PHE) I through VIII. The parties stipulated to the introduction of said documents. (Tr. 8) Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer, Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a through 1.d.

Applicant is 57 years old. He was born in Afghanistan and attended high school there. In 1977, he earned a bachelor's degree in electrical engineering. He later took additional courses in management training and sales. While in college, he became friends with some of his American professors and tutored their children in Dari. As required by the Afghanistan government, he served in its army for six months after completing his college education. Applicant speaks Dari, Pashto, Urdu, and Arabic, all Middle Eastern languages. (Tr. 57)

After the Afghanistan government was toppled by the Russian government in 1979, Applicant left Afghanistan in May 1980 and immigrated to the United States. He initially stayed with his brother, who had left in 1968 and had become a naturalized U.S. citizen. In 1984, Applicant married his wife, an American citizen. He became a

naturalized U.S. citizen in October 1985. They have two children who were born in the United States.

Applicant's parents were born in Afghanistan. They are deceased. He has a sister and brother, two step-sisters, and one step-brother from his father's previous marriage. All were born in Afghanistan. His sister is a citizen and resident of Afghanistan. His brother became a naturalized U.S. citizen in 1987 and resides in the United States. This brother is a translator for the U.S. Coalition Forces (Forces) and has been deployed to Afghanistan at least five times. One of his step-sisters is 83 years old and lives in Pakistan, but remains a citizen of Afghanistan. His other step-sister was living in Pakistan when she died in 2006. Both step-sisters fled to Pakistan when the war broke out in Afghanistan. (Tr. 55) His step-brother became a naturalized U.S. citizen in 1979 and resides in the United States. He has nieces and nephews who are citizens and residents of Afghanistan.

After arriving in the United States in 1980, Applicant worked for an electronics company for three years. He then joined an insurance company as a sales representative. He has since become a licensed insurance agent and works as an independent broker. (Tr. 59)

Applicant learned of translator opportunities with the Coalition Forces through his brother. In October 2004, he applied for a position with a federal contractor and completed a security clearance application. (GE 2) He was hired with an interim clearance and served the Forces in Afghanistan from July 2005 to March 2006. He then returned home and resumed his work in the insurance industry. (GE 4 at 2)

Applicant speaks with his sister, residing in Afghanistan, once or twice a year by telephone. She is a housewife and her husband is a construction worker. Their children are students. None of the family members work for the government. He has not seen her since 1997. She is aware of his work with the Forces. (Tr. 40; GE 4 at 4) He speaks to his step-sister and their families once or twice a year by telephone. (GE 4 at 4) He did not speak to or visit them while he was deployed to Afghanistan because he does not want to jeopardize their well-being. (Tr. 46-47) He visited his sisters in Pakistan in 1991 and 1997, who were living in refugee camps at the time. He continues to speak to his step-sister once or twice a year. (*Id.*) Sometimes he and his brothers send money to their sister and step-sister. (Tr. 49)

Applicant owns a home in the United States and has U. S. bank accounts. (Tr. 57-58) His two children attend college. (Tr. 19) There is no derogatory information in the record concerning his police or financial records. He has never been fired from a job. He has never been arrested. He has never used illegal drugs or been involved in an alcohol-related incident. (GE 1 and 2)

Applicant submitted two exhibits, setting forth his accomplishments while working in Afghanistan. His team leader for seven months wrote: "Much of our mission is dependent on the translation skills of our interpreters. I have [Applicant] to thank for my

successes in my role in tracking down and capturing insurgents, whose goals were to upset the fine balance of the new transitional government of Afghanistan.” (AE A) Applicant’s Commanding Officer from November 2005 to March 2006 believes Applicant is one of the best interpreters with whom he has worked. He stated that Applicant’s “work in an extremely sensitive position has been nothing short of spectacular. He is trusted by the chain of command and more importantly by the citizens of two provinces.” (AE B)

Applicant credibly and sincerely asserted his pride of U.S. citizenship. He stated:

I left Afghanistan. I’m not a citizen of that country. I don’t have any loyalty. I have nothing left there except my two sisters. I have my family here, back in America. And as you can see, the size of my family here in America, and I’m proud of my family. And I’m proud to be an American citizen. And I will uphold the law and the Constitution of the United States of America. (Tr. 62)

Afghanistan

I take administrative notice of the facts set forth in the Afghanistan Hearing Exhibits. Afghanistan is a country in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia in the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. It has about 18 million people. Afghanistan is presently an Islamic Republic that has had a turbulent political history, including an invasion by the Russians in 1979. After an Accord was reached in 1989 and Russia withdrew from the country, fighting continued among the various ethnic, clan and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic Government took power in 2004 after a popular election. Despite that election, terrorists and the Taliban continue to assert power and intimidation within the country. The country’s human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence. (AHE V)

Pakistan

I take administrative notice of the facts set forth in the Pakistan Hearing Exhibits. Pakistan is a parliamentary federal republic, created in 1947 after British India was partitioned when the British government granted India its independence. Pakistan was created for the Moslem population of the Indian sub-continent. Its population is about 60 million. It has a coalition government led by a prime minister and president elected in 2009. After September 11, 2001, Pakistan reassessed its relations with the Taliban and supported the U.S. and international coalition in its efforts to remove the Taliban from

power. Many Islamic extremists and terrorists are known to inhabit parts of Pakistan, leading to a growth of their insurgency. Although Pakistan has intensified its efforts to deal with the violence and terrorists, the country continues to experience serious problems. The U.S. Department of State confirms that many borders are known as safe havens for terrorists. Numerous suicide bombings and kidnappings have taken place over the past couple years. Human rights violations continue to be a significant problem, as killings, torture, and disappearances remain prevalent. The Pakistani government maintains domestic intelligence services. The U.S. government warns Americans against travel to Pakistan.

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 commonsense decision. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 an 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 adverse to an applicant 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 *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concerns relating to the guideline for foreign influence are 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.

AG ¶ 7 describes two conditions that could raise a security concern and may be disqualifying:

(a) contact with a foreign family member, business or professional associate, friend, or other person 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;¹ and,

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

¹ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Since leaving Afghanistan, Applicant periodically telephones his two sisters, one residing in Afghanistan and the other residing in Pakistan. Both are citizens of Afghanistan. He also speaks to his nieces and nephews periodically. One of his sisters knows that he worked for the U.S. government in Afghanistan. Applicant's connections to his family in Afghanistan and half-sister in Pakistan could create a potential conflict of interest between his security obligations and desire to help them, only in a situation wherein they were taken hostage or otherwise threatened with harm if he did not cooperate with terrorists or their governments. None of his family members have positions in which they could otherwise benefit from his access to sensitive information or technology. However, under either disqualifying condition, security concerns in this case could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his family members in Afghanistan or Pakistan.

The Government produced substantial evidence of these disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in this case are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The current positions and activities of Applicant's family members in Afghanistan and Pakistan do not involve the government or military and they would have no interest in acquiring protected information. Only their physical presence creates the potential that their interests could be threatened to the point that Applicant would confront a choice between their interest and those of the United States. Hence, AG ¶ 8(a) has some application.

Applicant produced significant evidence establishing AG ¶ 8(b). Based on his relationship and depth of loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the United States. He has lived in the United States since

1980 and did not return to Afghanistan until his employment with the U. S. Coalition Forces in July 2005. However, he did visit Pakistan in 1991 and 1997. His wife and children are U.S. citizens, residing in the United States. He owns property and holds bank accounts in the United States. He is a licensed insurance agent and has owned his own insurance agency for a number of years. There is no evidence that he owns property in Afghanistan or Pakistan. He has limited contact with his two sisters and their families, living in Pakistan and Afghanistan. While in Afghanistan, he has willingly risked his life to support the U.S. efforts. There is no evidence that he has connections or contact with any people other than his family members. He refers to himself as an “American.”

Applicant maintains ongoing, albeit sporadic, communication with his sisters and other relatives in both countries. Hence, AG ¶ 8(c) cannot apply, as those contacts are sufficiently frequent and not casual.

Whole Person Concept

Under the whole person concept, an 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Three circumstances weigh against Applicant in the whole person analysis. First, there is a significant risk of terrorism and human rights abuses in Afghanistan and Pakistan. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists and friendly governments could attempt to use Applicant’s

siblings and family to obtain such information. Second, he had numerous connections to Afghanistan before he immigrated to the United States in 1980. Following his birth, he spent his formative years there. He was educated at an Afghanistan college. Third, one sister and her family are citizens and residents of Afghanistan, and his step-sister is a resident of Pakistan.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 29 years, and has been a naturalized citizen for almost 24 years. His spouse and children are U.S. citizens. Both of his brothers are naturalized U.S. citizens and residents. Out of his sense of patriotism for the United States in its endeavors in Afghanistan, he worked for the U.S. Forces as a translator. His brother holds a similar position. His ties to the United States, which he refers to as his country, are much stronger than his ties to his siblings or families living in Afghanistan and Pakistan. There is no evidence he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously, and he has worked diligently and impressively for three years in an important capacity for the U.S. efforts. His supervisors and colleagues assess him as loyal, trustworthy, conscientious, and responsible, giving him excellent evaluations and praising his dedication to the cause of freedom in Afghanistan. He is a good family member and U.S. citizen. After leaving Afghanistan in 1980, he never returned until he worked with the U.S. forces in 2005.

No witnesses recommended denial of Applicant's security clearance. There is no derogatory information about him in the record. There is evidence that he has successfully worked in high-risk circumstances and made significant contributions to the United States in its efforts in Afghanistan. He credibly asserted his allegiance to the United States.

Applicant held an interim security clearance during his tenure in Afghanistan without any indication that he breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd.

July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, including Applicant's commendable performance as a translator and advisor in Afghanistan, I conclude Applicant has fully mitigated the security concerns pertaining to foreign influence.² Overall, the record evidence leaves no doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B.

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:	FOR APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge

²I conclude that the whole person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶ 8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to support approval of a security clearance in this case.