



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



In the matter of:)
)
) ISCR Case No. 09-01701
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

07/31/2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant’s relationships with family members who are residents and citizens of Afghanistan and Pakistan are mitigated by his deep and long-standing ties to the United States. However, his mental health issues remain a concern. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive, ¹ on October 19, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) explaining that it was unable to find that it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR, which detailed the reasons for the action under the psychological conditions and foreign

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

influence guidelines, recommended the case be submitted to an administrative judge for a determination to revoke or deny Applicant's access to classified information.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on February 7, 2012. The hearing took place as scheduled on April 3, 2012. At hearing, Government's Exhibits (GE) 1 through 10, as well as Hearing Exhibit (HE) 1, a demonstrative exhibit detailing Applicant's foreign family members, were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were also admitted without objection. At Applicant's request, I left the record open until April 30, 2012 to allow him to submit a medical evaluation. He timely submitted the evaluation, which was admitted as AE K, without objection. I received the transcript (Tr.) on April 10, 2012.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan and Pakistan. Without objection from Applicant, I approved the request. The request and the attached documents have been included in the record as HE 2. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 48-year-old employee of a federal contractor who works as a translator and linguist. Born in Afghanistan, Applicant immigrated to the United States as a refugee in 1993, joining his parents and four brothers – two of whom also work as translators for federal contractors. Married in December 2000 to an Afghan citizen who is a permanent resident of the United States, he is the father of five children between the ages of 18 months and 10 years old. All are U.S. citizens by birth. Applicant's parents-in-law are citizens and residents of Afghanistan. Applicant believes that his father-in-law, now retired, served in the Afghanistan National Assembly; however, he does not know the details of his father-in-law's public service. Applicant speaks to his in-laws by telephone twice each year on holidays. Applicant's two sisters and their husbands are residents and citizens of Pakistan. He speaks to his sisters, one of whom is a teacher, the other a housewife, every two months by telephone. Neither of Applicant's brothers-in-law works for the government.²

Between 1999 and 2008, Applicant worked in the fast-food industry, frequently changing jobs to earn more money to support his growing family. In 2008, he obtained a position as a translator supporting military operations overseas. While on assignment in February 2010, Applicant was hospitalized for five days after exhibiting erratic behavior. The details of the episode are unclear. In one account Applicant claims he was hospitalized after being found asleep on the job; in another he claims that he suffered from stress issues and suicidal thoughts. After being released from the hospital, Applicant voluntarily resigned his position and was escorted home by his employer. During the multi-day trip, Applicant continued to display erratic behavior. During the first

² Tr. 41, 45-49; GE 1, 9, 10.

leg of the trip, Applicant became unresponsive when he and his escort reached the security check point. His escort had to physically move him through the security check point. Applicant displayed a similar unresponsiveness during the second leg of the trip. He refused to comply with the security protocol at the airport. As Applicant became more uncooperative, airport police and airline security were called to resolve the problem. Eventually, law enforcement made the decision to take Applicant to a medical center for diagnosis.³

Applicant continued to resist the security officers, refusing to sit in the wheelchair waiting to take him to the medical center. Only after the threat of force did Applicant voluntarily sit in the wheelchair. During transport, Applicant sprang from the chair and began to walk quickly through the terminal causing security to chase and restrain him. After being medicated and cleared for travel by the treating physician, Applicant and his escort resumed their travel to the United States. The third leg of the trip began with Applicant's continued refusal to cooperate with the airport security procedures, but he was overpowered by his escort and airport security. The escort struggled to get Applicant through the terminal and onto the plane because Applicant kept trying to sit down as they walked through the airport. Once on the plane, the escort seated Applicant in the section of the plane reserved for them. After the plane took off, Applicant went to sleep only waking to eat or use the restroom.⁴

Three hours before landing in the United States, Applicant awoke and resumed his bizarre behavior. Every few minutes, Applicant would leave his seat, run to a window, open the shade, look out, close the shade, run back to his seat, and lay down. He continued this pattern with quickening speed until the escort noticed that the other passengers and the flight attendant were becoming alarmed. The escort managed to restrain Applicant for a few minutes; however, Applicant resumed the behavior at a more rapid rate. The escort explained to Applicant that his behavior could get him detained by federal authorities. Applicant remained seated throughout the remainder of the flight, but the escort struggled to keep Applicant in an upright position as the plane landed.⁵

Deplaned without incident, Applicant's erratic behavior resumed once he cleared immigration. Applicant attempted to walk past the customs officer without completing the process. He was able to move on after the escort intervened on his behalf. At baggage claim, Applicant tried to sit down on the baggage belt and then on the floor. When the escort went to inquire about their missing luggage, Applicant laid on the floor, drawing the attention of airport security. Again, the escort defused the situation and took Applicant to a location where they could wait for his family to pick him up. As they waited in the terminal, Applicant again laid on the floor. When his brother-in-law came to retrieve him, Applicant became instantly alert and talkative. According to the escort, he

³ Tr. 25, 35, 59-60; GE 1, 7, 9.

⁴ GE 7.

⁵ GE 7.

walked out of the air port as if nothing had happened. Applicant does not recall any details of this trip.⁶

Upon returning home, Applicant entered intensive outpatient treatment at a local hospital. He was diagnosed by his treating psychiatrist as having a psychotic disorder not otherwise specified (NOS), major depressive disorder with psychotic features, and post-traumatic stress disorder (PTSD). Applicant received a similar diagnosis in 2006 after being hospitalized for hearing voices and having suicidal thoughts. Applicant reported being stressed about maintaining his family's financial stability. Applicant was prescribed anti-psychotic medications, which he stopped taking shortly after his discharge. During his 2010 treatment, the treating psychiatrist prescribed an antidepressant, which was the only medication Applicant agreed to take at the time. He was instructed to take one pill a day for six months. He stopped taking the antidepressant in June 2010 and has refused to take any psychotropic medicines since.⁷

Around the time Applicant decided to stop taking his prescribed antidepressant, he interviewed for a position with his current employer. Initially, Applicant was told that he could not be hired for certain contracts if he was taking an antidepressant. He was hired by his current employer in August 2010.⁸

Before the issuance of the SOR, DOHA requested that Applicant undergo a psychological evaluation. Although the evaluating psychologist noted that at the time of the evaluation Applicant appeared to be symptom free, he did not make a specific diagnosis. He concluded that Applicant's lack of insight into his behavior and denial of his mental health issues may adversely affect Applicant's judgment, reliability, and trustworthiness. In response, Applicant obtained a second opinion from another psychologist, which was completed in April 2012. While this evaluation is also bereft of a diagnosis, the evaluating psychologist determined that Applicant is not currently displaying any psychological dysfunction that could prevent him from resuming his work as a translator. However, given Applicant's apparent vulnerability to high levels of stress, the psychologist observed that Applicant could return to his translator job under circumstances that allow for adequate sleep, rest, and relaxation.⁹

Applicant does not believe that he has ever suffered from any mental health issues. He attributes his incidents in 2006 and 2010 to sleep deprivation. He testified that while working abroad he was never exposed to any event that could have negatively impacted his mental health. He only complained of long hours and lack of sleep.¹⁰

⁶ Tr. 60 - 61; GE 7.

⁷ Tr. 52-58; GE 6, 9.

⁸ Tr. 66-69; GE 1.

⁹ GE 8, AE K.

¹⁰ Tr. 34-35, 52-55, 59-60, 71-75.

As the sole provider for his family, Applicant is anxious to return to work. In the year and a half he has been home, he has worked as a cashier at a fast food restaurant. In 2011, he earned \$17,000, down from the \$210,000 he earned as a translator working overseas. Applicant is not currently receiving medical treatment for his mental health issues.¹¹

Afghanistan

Afghanistan is located in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia on the north. Afghanistan is presently an Islamic Republic of 18 million people. The country has experienced a turbulent political history, including an invasion by the Russians in 1979 and fighting among the various ethnic, clan and religious militias after the Russians withdrew from the country in 1989. 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 within the country.¹²

The country's human rights record remains poor. Problems include: extrajudicial killings; widespread official impunity; official corruption; and violence and societal discrimination against women. 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.¹³

Pakistan

Pakistan is a parliamentary federal republic in Southwest Asia. It is a low-income country, with a population that is 97 percent Muslim. After September 11, 2001, Pakistan was one of only three countries to recognize the Taliban regime of Afghanistan. However, Pakistan reassessed its relations with the Taliban and pledged support to the United States and the international coalition in Operation Enduring Freedom, which aimed at removing the Taliban from power. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The leaders of the Taliban operate openly in Pakistan. Extremists led by the Pakistani Taliban (Tehrik-i-Taliban "TTP") commander and other Al-Qaida extremists have re-exerted their hold over areas in the FATA and the North West Frontier Province (NWFP). Taliban financing, which crosses the border of Pakistan to

¹¹ Tr. 76-77; GE 9 – 10.

¹² HE 2.

¹³ HE 2.

Afghanistan, has allowed the insurgency in Afghanistan to strengthen its military and technical capabilities.

The security situation in Afghanistan worsened in 2008, including an increase in Al-Qaida's presence to levels unseen since 2001-2002, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. Although Al-Qaida's core organization in the tribal areas of Pakistan was under greater pressure in 2009 than in 2008, it remained the most dangerous component of the larger Al-Qaida network. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to Al-Qaida and a number of foreign and Pakistan-based extremist groups. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremist groups, Al-Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies.

The Pakistani government has a poor human rights record. Reported human rights violations include extrajudicial killings, torture and rape by security forces, lack of judicial independence, arbitrary arrest, widespread corruption, disappearance and imprisonment of political opponents, and trafficking in women and children. As of February 2009, the government maintained domestic intelligence services that monitored political activists, suspected terrorists, the media, and suspected foreign intelligence agents. The Department of State warns U.S. citizens of the risks of travel to Pakistan in light of threats of terrorist activity. Since 2007, American citizens have been kidnapped for ransom or other reasons. Credible reports indicated that authorities routinely intercepted and opened mail without requisite court approval, and monitored mobile phones and electronic messages.¹⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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(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.

¹⁴ HE 2.

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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

Psychological Conditions

The security concern relating to the guideline for Psychological Conditions is set out in AG ¶ 27:

Certain emotional, mental and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g. clinical psychologist or psychiatrist) employed by or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised on the basis of seeking mental health counseling.

All of the disqualifying conditions available under AG ¶ 28 apply:

(a) the behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;

(b) an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness; and

(c) the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

Applicant experienced psychotic episodes in 2006 and 2010 that required hospitalization. During the latter event, which occurred while Applicant was working overseas, his behavior was so bizarre and erratic, that his employer removed him from the contract and sent him home. On both occasions, Applicant willingly entered treatment, but Applicant has refused to take the prescribed psychotropic drugs after being discharged. The psychologist who evaluated Applicant in connection with this security clearance investigation concluded that Applicant's inability to acknowledge his mental health issues may compromise his security worthiness.

None of the mitigating conditions under the AG ¶ 29 apply. Applicant has displayed little insight into the source of his mental health issues. Based on the available medical records, sleep deprivation, while a potentially aggravating factor, does not appear to be the root cause of his psychological dysfunction. As is astutely noted by the psychologist hired by Applicant, he is extremely vulnerable to stress. However, Applicant has not provided any evidence to show that he is able to manage this significant trigger. While both evaluating psychologists are in agreement that Applicant is not currently showing symptoms of the previously diagnosed psychotic order, neither provided any prognosis regarding Applicant's mental or emotional stability. Because Applicant is not currently receiving medical treatment, there is no indication that his condition – while episodic – has a low probability of recurrence or exacerbation.

Guideline B, Foreign Influence

Under this guideline, "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."¹⁵

¹⁵ AG ¶ 6.

AG ¶ 7 indicates two conditions that are disqualifying in this case:

- (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; 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.

Applicant's parents-in-law are citizens of Afghanistan. He believes that his father-in-law, now retired, was a member of the national assembly. His two sisters and their husbands are citizens and residents of Pakistan. None of his relatives in Pakistan are employed by the government. The mere possession of close ties with foreign family members is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. However, this inquiry is not limited to countries hostile to the United States. Friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.

The relationship of Afghanistan and Pakistan with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in those countries do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Afghanistan and Pakistan who might be coerced by terrorists or other governmental entities in those countries. While there is no evidence that intelligence operatives or terrorists from Pakistan or Afghanistan seek or have sought classified or economic information from or through Applicant, or his relatives, it is not possible to rule out such a possibility in the future. Given the perilous conditions in these countries caused by the operation of the Taliban, terrorist groups, the wide-spread corruption within both governments, and the countries' poor human rights records, a heightened risk exists.

The following mitigating conditions under AG ¶ 8 are potentially applicable:

(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.

Applicant has lived in the United States for 19 years and has established deep roots. He owns his home, and his five children are U.S. citizens. The majority of Applicant's immediate family, his wife, children, parents, and four of his six siblings, reside in the United States and live in the same community as Applicant. Conversely, Applicant has two immediate family members, two brothers-in-law, and his parents-in-law living in Pakistan and Afghanistan, respectively. Applicant does not maintain regular contact with them. While his contacts with his foreign relatives cannot be considered casual, they are infrequent. Viewed in totality, Applicant's connections to the United States outweigh those to his foreign relatives. As such, I find that he is not vulnerable to foreign exploitation, inducement, manipulation, pressure, or coercion because of his foreign relations. As such, these relationships do not create a potential conflict of interest.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept and have doubts about Applicant's ability to protect classified information. Applicant's desire to return to his lucrative translator position is understandable; however, his untreated mental health issues pose an unacceptable security risk. Having Applicant perform his translator duties in an environment that allows adequate sleep, rest, and relaxation does not mitigate the security risk. Applicant refuses to acknowledge his mental health issues; in doing so, he also has not learned to manage the conditions that trigger his episodic psychosis. Applicant suffers from a condition that, when exacerbated, impairs his judgment and reliability and has the potential to compromise the security of those around him. Clearance is denied.

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 I: AGAINST APPLICANT

Subparagraphs 1.a -1.d: Against Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraphs 2.a - 2.d.: For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge