



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-02593
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Department Counsel
For Applicant: *Pro se*

April 13, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Questionnaire For Sensitive Positions on October 9, 2008. (Government Exhibit 4). On September 25, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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 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.

The Applicant responded to the SOR in writing on October 13, 2009, in which she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on November 23, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on November 30, 2009, and she submitted a reply. The case was assigned to the undersigned for resolution on January 11, 2010. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts concerning the current political conditions in Islamic Republic of Afghanistan. Applicant made no objection. The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

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 28 years of age and is employed as a Program Analyst. She seeks a security clearance in connection with her 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 she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant admits to each of the allegations set forth under this guideline. She was born in another country in 1982, although her parents erroneously recorded her official birth place as Pakistan or Afghanistan as reflected on her passport and citizenship documents. (Government Exhibit 4). The Applicant's father was born in and is a citizen of Afghanistan, and is a high government official. In the early 1980's, the Applicant's father left Afghanistan and was living in another country when the Applicant was born. In 1984, the Applicant and her family moved to the United States. Her father worked in the United States until 2001, when he went back to Afghanistan to work for the Afghan government.

Applicant communicates telephonically with her father approximately six times per year and at least once a month by e-mail. Applicant's father travels to the United States on his green card twice a year and the Applicant visits with him then. (Government Exhibit 3.)

In 2003, the Applicant traveled to Afghanistan to visit her father. She states that while in Afghanistan she was under security and did not travel alone. During that visit she states that she did not come in contact with anyone that she thought was suspicious. (Government Exhibit 3.)

The Applicant indicates that she has lived in the United States for most of her life and was educated here. She has a consistent employment record and no criminal record. (Applicant's Response to FORM.) She states that she has no divided loyalties, nor does she sympathize with the Afghan government or any other foreign government. (Government Exhibit 3.)

I have taken official notice of the following facts concerning the country of Afghanistan. Afghanistan is a problematic region. The country is currently fighting an

insurgency with assistance from the United States. Despite the new democratic government that took over in 2004, the insurgents remain strong and Afghanistan's human rights record has remained poor. Numerous people, including civilians, have been killed by security and factional forces, as well as by terrorists and insurgents, including the Taliban and Al Qaida. While progress has been made, the Taliban led insurgency remains strong and resilient. No part of Afghanistan is safe or immune from violence.

The United States Department of State released information dated April 21, 2009, stating that recent intelligence reporting indicate that insurgents are planning to conduct a suicide attack against United States personnel in the Serena Hotel in Kabul City. Kabul, in particular, has seen a rise in militant attacks, including rocket attacks, vehicle borne IED's and suicide bombings. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

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

6. *The Concern.* 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.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- 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 extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress, and;
- 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 predicated 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 status and her 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 Applicant presently qualifies for a security clearance.

An individual who may be subject to foreign influence, or has foreign connections, 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.

CONCLUSION

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.

The evidence shows that the Applicant's father is a citizen of Afghanistan and a high government official. Applicant maintains a close and continuing relationship with her father in Afghanistan as evidenced by her regular communication by telephone and e-mail with him. The risk of this strong foreign family tie is heightened by the fact that the Applicant's father has connections to the Afghan government by virtue of his employment. Furthermore, Applicant's travel to Afghanistan places her in a vulnerable position to be subject to coercion, exploitation and/or pressure by the Afghan government. It is also noted that the current political situation in Afghanistan elevates the cause for concern in this case. The United States is directly involved with combat operations in Afghanistan and there is a clear threat of hostility and terrorism against the United States. In this case, the possibilities are great that the Applicant may at some point be placed in a position to be forced to choose between the interests of a foreign individual, group organization, or government and the interests of the United States.

Under Foreign Influence, Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. I have considered Mitigating Condition 8.(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.*, and its applicability in this case. However, under the facts presented, there is insufficient evidence in the record to find that it is unlikely that the Applicant will ever be placed in a position to be forced to

choose between the interests of a foreign government and the United States. Simply stated, Applicant's relationship with her father, a foreign national government official, and her regular contact with him creates a risk for foreign influence or exploitation.

Furthermore, there is no evidence in support of mitigation under the whole-person analysis. The Applicant has submitted no favorable recommendations or sufficient documentation to support security clearance eligibility. I have considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of untrustworthiness, unreliability, a lack a candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

The Applicant's regular foreign contact with her father infers a strong bond of affection with him that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore, there is a possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. Thus, I find that the Applicant is vulnerable to foreign influence. 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 failed to meet 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.
Subpara. 1.a.: Against the Applicant
Subpara. 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