



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



In the matter of:)
)
) ISCR Case No. 09-05626
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

November 22, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On February 19, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) as part of his employment with a defense contractor. (Gov X 4) On April 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for foreign influence under Guideline B. (Gov X 1) 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) effective in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on April 11, 2010. (Gov X 2)

Applicant answered the SOR on May 10, 2010. (Gov X 3) He admitted seven of the eight factual allegations under Guideline B. The one factual allegation he denied

was because the information in the allegation was no longer accurate. Applicant provided new information. I considered that Applicant admitted this allegation with the new information. He elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on June 22, 2010. Applicant received a complete file of relevant material (FORM) on July 31, 2010, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant submitted additional information correcting factual information in the FORM. Department Counsel had no objection to the additional information. The case was assigned to me on October 4, 2010.

Procedural Issues

Department Counsel in the FORM asked that administrative notice be taken of certain facts concerning Afghanistan. I considered the request and the documents provided by Department Counsel. Administrative notice is taken of the facts as noted below in the Findings of Fact.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following essential findings of fact.

SOR 1.a, 1.b, and 1.c allege that Applicant's parents, two brothers, and four sisters are citizens and residents of Afghanistan. SOR 1.d alleges that Applicant's brother is a citizen and resident of Uzbekistan. SOR 1.e alleges that Applicant's stepbrother is a citizen of Afghanistan and a resident of Russia. SOR 1.f alleges that Applicant traveled to Uzbekistan in 2008. SOR 1.g alleges Applicant traveled to Afghanistan from about April 2008 to October 2008. SOR 1.h alleges that Applicant sends approximately \$1,000 yearly to his family in Afghanistan. Applicant initially admitted all factual allegations except allegation 1.e which he denied. In denying this allegation, Applicant notes that his stepbrother now resides in Afghanistan. I have *sua sponte* amended SOR allegation 1.e to read that his stepbrother is a resident of Afghanistan. Applicant has now admitted all allegations in the SOR for foreign preference. (Gov X 3)

Applicant is 26 years old and has been employed as a linguist or translator for a defense contractor for almost two years. Applicant was born and raised in Afghanistan. He left Afghanistan and went to Uzbekistan as a teenager at the urging of his parents because of the recruitment of teenagers for service by the terrorist organization, the Taliban. He immigrated to the United States as a refugee in May 2002 and completed high school. He worked at various jobs and became a United States citizen at the first opportunity in September 2007. Applicant is working for the defense contractor in his native country of Afghanistan. Most of Applicant's large family is still in Afghanistan. In addition to his immediate family, he has sisters-in-law, brothers-in-law and nieces and nephews who are citizens and residents of Afghanistan. None of these relatives work

for the Afghan government. Applicant contacts his parents by telephone a few times a week. Most of his siblings he talks to by telephone once a week or at least bi-weekly. He visited his family for over six months in 2008 to assist with the care of his sick mother. He went across the border into Uzbekistan during this visit to see his brother. Applicant does has one sister who is a citizen and resident of the United States. (Gov X 4, 5, 7)

Afghan was an independent monarchy nation from 1919, when the British relinquished control, until 1973 when the monarchy was overthrown by a military coup. The Soviet government supported a coup in 1978 that led to a Marxist government, and Soviet forces invaded and occupied Afghanistan starting in December 1979. Afghan freedom fighters, the Mujaheddin, opposed the Soviet occupation which led to fierce fighting. An accord was reached requiring Soviet forces to withdraw from Afghanistan in February 1989. The Mujaheddin were not a party to the accord and refused to accept the agreements. This led to a civil war that permitted the Taliban to come to power in the mid 1990s. The Taliban imposed an extreme form of Islam on the entire country and committed extensive human rights violations. They also provided sanctuary for terrorist organizations like Al Qu'ida. When the Taliban would not expel Al Qu'ida after the September 11, 2001 attacks on the United States, the United States and coalition partners commenced military operations in October 2001 that forced the Taliban from power in November 2001.

Afghanistan formed a democratic government in 2004. Even though progress has been made since then, Afghanistan faces many challenges including defeating terrorists and insurgents, recovering from decades of civil strife, and rebuilding an economy and infrastructure. The Taliban-backed insurgency has continued with increasingly frequent, sophisticated, dangerous, and destabilizing activities in spite of United States and coalition military operations. Civilians continue to bear the brunt of the violence. The Taliban continues to maintain momentum in spite of losses to their leadership. Armed conflict has spread to almost one-third of the country including areas previously free of violence. The lack of security in many areas and generally low government capacity and competency has hampered efforts at self-governance and economic development. There is continued government corruption and an expanding drug trade. The human rights record is poor with extrajudicial killings, torture, poor prison conditions, official impunity, prolonged pretrial detention, restrictions on freedom of press and religion, violence against women, sexual abuse against children, and human trafficking. The Taliban has strengthened its activities because of Pakistan funding sources, the drug trade, and kidnappings. The Taliban insurgent operations result in numerous attacks and deaths targeted at non-government organizations, journalists, government workers, and United Nation workers. There is an increase in militant attacks by rockets, vehicle-born explosive devices, and suicide bombing, even in the capital city, Kabul. The United States Department of State classifies Afghanistan as a critical security threat to United States citizens.

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 must be considered 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(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.

Analysis

Guideline B: Foreign Influence

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 the 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 consideration 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 ¶ 6)

Applicant's extensive family, except for one sister who is a citizen and resident of the United States, are all citizens and residents of Afghanistan. He talks to most of them frequently by telephone. He visited them for an extensive period in 2008, and he sends them money for their support. Applicant's contact with his family in Afghanistan raises security concerns under Foreign Influence Disqualifying Conditions (FI DC) AG ¶ 7(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 FI DC AG ¶ 7(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).

The mere existence of foreign family members or friends is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contact with his family in Afghanistan must be examined to determine whether the contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime a family member is subject to a foreign government. The factors that heighten the risk in regard to Afghanistan are the critically dangerous conditions in the country, the human rights abuses, the extensive terrorist activities, and the Taliban hostility to the United States and its coalition partners.

I have considered Foreign Influence Mitigating Conditions (FI MC) AG ¶ 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.); FI MC AG ¶ 8(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 FI MC AG ¶ 8(c) (Contact or communication

with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation). A disqualifying condition based on foreign family members can be mitigated by balancing the potentially conflicting loyalties to the family members and the interests and loyalties to the United States to determine if an applicant can be expected to resolve any conflict in favor of the United States interest.

The conditions in Afghanistan place a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. Applicant's contacts with his family are not casual or infrequent but are close. He talks to them frequently by telephone, visited them for an extensive period in 2008, and sends them money for their support. Applicant has not established that his sense of loyalty to the United States will outweigh his sense of loyalty or obligation to his family members in Afghanistan. He did leave Afghanistan as a refugee from the Taliban. However, he is young and has only been in the United States for approximately eight years, and a citizen for only three years. He has only one sibling in the United States, and the rest of his family are in Afghanistan. He has not presented any information that he owns any property in the United States or has any overwhelming connections to the United States. Applicant did become a United States citizen at the earliest opportunity, and he is employed in support of United States forces fighting in a hostile war zone in his native country. However, he has not presented information whether he is employed in Afghanistan because of his sense of loyalty and obligation to the United States or the position is simply a very good job with good pay for which he is qualified.

The limited information Applicant presents does not meet his burden to establish that his sense of loyalty to the United States outweighs the connection to his family members in Afghanistan. He has not established he would resolve any conflicts in favor of United States interests. A conflict of interest between his sense of loyalty to his family and sense of loyalty to the United States is possible because of the critical adverse circumstances faced by Applicant as a United States citizen with family members living in the hostile conditions in Afghanistan. In balancing all of the factors mentioned and considered above with regard to his family, I am not satisfied Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States. I am satisfied that his trip to Uzbekistan in 2008, his lengthy visit to Afghanistan in 2008, and his sending funds to his family in Afghanistan are not independent reasons to raise a security concern. They are factors to show that he has close contact and affection with his family members. I find for Applicant as to SOR 1.f, 1.g, and 1.h. Applicant has not met his heavy burden to show that his contact with his family does not cause a security concern. I conclude Applicant has not mitigated security concerns rising from his contact with his family in Afghanistan.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all

the circumstances. An 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) 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered that Applicant came to the United States as a refugee from the hostile forces and conditions in Afghanistan and became a United States citizen at the earliest opportunity. However, the majority of his extensive family is located in Afghanistan and he has minimal connections to the United States. He has not established that his sense of loyalty to the United States outweighs the connection to his family in Afghanistan and that he would resolve any conflicts in favor of the United States. Applicant failed to present information that his contact with his family in Afghanistan does not create a security concern. Access to classified information is denied.

Formal Findings

Paragraph 1, Guideline C: AGAINST APPLICANT

Subparagraphs 1.a - 1.e: Against Applicant

Subparagraphs 1.f - 1.h: 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.

THOMAS M. CREAN
Administrative Judge