



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



In the matter of:

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) ISCR Case No. 09-08099
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Applicant for Security Clearance

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

06/28/2012

Decision

HOWE, Philip S., Administrative Judge:

On June 29, 2009, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On March 18, 2011, 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on March 31, 2011. Applicant requested his case be decided on the written record in lieu of a hearing.

On August 28, 2011, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant

on October 26, 2011. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on November 12, 2011. Applicant filed a Response to the FORM on November 13, 2011, within the 30 day time allowed that would have expired on December 12, 2011. I received the case assignment on May 14, 2012, after the case was reassigned from another administrative judge. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Afghanistan. (Item 6) The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.a and 1.h, and admitted the other six allegations. (Item 2)

Applicant is 30 years old and was born in Afghanistan. He immigrated to the United States in 2001. He became a U. S. citizen on April 4, 2007. He has a U.S. passport. He works for a defense contractor and has since September 2007. Applicant's children were born in the United States in 2002 and 2008. He worked in the hospitality industry in the United States until 2007 when he obtained his current type of linguist position. He rents his current residence. Applicant obtained a nursing certificate from an Afghan school in 1998. (Items 2, 4, 5)

Applicant's wife is a naturalized United States citizen and lives in the United States with Applicant. She was born in Afghanistan and immigrated with her husband. She became a U.S. citizen in 2007. (Items 4, 5)

Applicant's parents are citizens of and residents in Afghanistan. They came to the United States in 2001 with Applicant, but later returned to Afghanistan. His father is a journalist and wanted to work again in that business in his homeland after the Taliban was ousted from power in December 2001. (Items 2, 4, 5)

Applicant has two brothers and a sister who were born in Afghanistan and moved to the United States when Applicant did. They became U.S. citizens in 2007. (Item 5)

Applicant's mother-in-law and father-in-law are citizens of Afghanistan and now are permanent residents of the United States. They reside at the same address as Applicant. (Answer)

Applicant has one brother-in-law, who is a citizen of Afghanistan and lives in Tehran, Iran, and works for the state-run media there. Another brother-in-law is a citizen of Afghanistan and is a resident of Moscow, Russia. The brother-in-law owns a warehouse there and has done so for the past 15 years. Applicant has telephone contact with both men on a monthly basis. Iran and Russia have political interests inimical to those of the United States. (Items 5 and 6)

Applicant's uncle is a citizen of Afghanistan and is a resident of the United Kingdom. Applicant's SF-86 states he contacts his uncle more than 15 times each year by e-mail. He stated he recently visited his uncle. (Items 4, 5)

Applicant's SF-86 states he contacts his brother-in-law in Russia 8 to 15 times each year. His brother-in-law in Iran he contacts by email more than 15 times each year. He also listed he visited that brother-in-law. (Item 4)

Applicant's Answer includes six letters of support and recommendation from military members with whom he has served from 2006 to 2010. His Answer also includes six Certificates of Appreciation from 2010. The letters of support give Applicant very high recommendations, extolling his experience and conscientious service. He is described as a gentleman, highly competent and very trustworthy. (Answer)

Applicant places his loyalty with the United States over Afghanistan, according to his Answer and interview with the government investigator. (Items 1, 5)

I take administrative notice of the following facts regarding Afghanistan: In 1919 the British Empire relinquished control of Afghanistan, which was a neighbor to the British-ruled India. Tsarist Russia and Britain had fought for control during the 19th Century. Afghanistan is slightly smaller than the State of Texas and is located adjacent to Pakistan. The population is 28 million people. The national religion is Moslem. From 1747 Afghanistan had been a monarchy. The last king ruled from 1933 to 1973. He was overthrown by a cousin who had been his Prime Minister. The monarchy was abolished in 1973.

In 1978 the communist political party launched a military coup and overthrew the incumbent government. The Afghan president and his family were murdered and a communist-style regime installed. The populace did not approve of the communist "reforms" of the new government and opposed the regime.

In December 1979 the Russian Communist government invaded Afghanistan after the Afghan government refused to accept advice on how to stabilize the country in the face of the growing insurgency. In 1989 the Russians agreed to withdraw their armed forces from Afghanistan. After years of turmoil the country sank into anarchy by 1994. The Taliban, a fundamentalist Islamic movement, occupied the capital city of Kabul in 1996 and by 1998 had gained control of 98% of the country. The Taliban government gave sanctuary to Al-Qaida, the Osama bin Laden led terrorist group. After

the attacks against the United States in September 2001 the U.S. military and anti-Taliban indigenous factions drove the Taliban government from power in November 2001.

Afghanistan suffers from rampant corruption and continued Taliban attacks. The United States and its NATO allies have many troops in Afghanistan to assist the current elected government in fighting the Taliban. There are human rights issues, including extrajudicial killings, torture, arbitrary arrest and detention, violation of privacy rights, restrictions on a free press and religious freedom.

The Taliban finances its operations through criminal networks and narcotics cultivation. Money raised from these enterprises allows the Taliban to purchase weapons and pay fighters.

The U.S. Department of State warns the security threat in Afghanistan against all U.S. citizens is critical. Travel is unsafe. The Taliban targets humanitarian workers, U.N. staff members, Afghan government workers, and employees of non-governmental organizations. (Item 6)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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, the administrative judge applies 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.

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.

According to Directive ¶ E3.1.14, the Government must 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 the 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 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. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concerns regarding 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 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 three 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;
- (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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant lives with his mother-in-law and father-in-law, who are legal residents of the United States but citizens of Afghanistan. His brothers-in-law live in countries whose political interests are inimical to those of the United States, one living in Tehran, Iran and the other in Moscow, Russia. Applicant speaks with them once a month and communicates by email more frequently.

Applicant's parents live in Afghanistan and are citizens of that country. He has contact with them. All of these contacts and familial relationships raise security concerns under AG ¶ 7 (a), (b), and (c).

AG ¶ 8 provides three conditions that could mitigate security concerns:

(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.¹

Applicant's brothers-in-law and his parents live in countries that raise a security concern. The security situation in Afghanistan is tenuous, according to the U.S. State Department. Iran and Russia are opposed to U.S. interests around the world. The brother-in-law in Iran works for the state-owned and operated media. Applicant's connection to him could place Applicant in a position to have to choose between that relationship and his duty to the United States. Applicant's parents living in Afghanistan

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).

could also cause a conflict of interest if they were pressured to compromise Applicant's situation. Their physical presence creates the potential that their safety could be threatened to the point that Applicant would confront a choice between their interest and those of the United States. AG ¶ 8 (a) has no application.

Applicant does not have deep loyalties to the United States because he has only been here for 11 years. He arrived in the United States in 2001. He rents a home. He worked in the hospitality industry after coming to the United States. Applicant did not provide any information on his assets in the United States or in any other part of the world. His children were born in the United States. His parents and parents-in-law came to the United States with him. His parents returned to Afghanistan. His wife also became a U.S. citizen in 2007. Applicant became a linguist in 2007. He has only worked in that business for five years. It is not clearly evident from his statements that he will resolve any conflict of interest in favor of the United States. AG ¶ 8 (b) does not apply.

Contact by Applicant with his relatives in Afghanistan, Iran, and Russia is not casual or infrequent so there is a risk of foreign influence. AG ¶ 8 (c) does not apply.

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 relevant 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 commonsense 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 facts and circumstances surrounding this case. Applicant's "customers" and his co-workers submitted substantial and glowing statements about his work and loyalty. These are persons who have been in service with him and relied on Applicant's linguist talents for their advantage. Applicant is experienced in his job and has had no breaches of security regulations during his service according to his letter writers. These factors do

not counterbalance the familial connections he has in his country of origin and with his brothers-in-law in Iran and Russia.

There is a significant risk of terrorism and human rights abuses in Afghanistan. More importantly for security purposes, terrorists hostile to the United States actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's parents and brothers-in-law to obtain such information. Second, he had numerous connections to Afghanistan before he immigrated to the United States in 2001. Following his birth, he spent his formative years there and received his nursing education from a school there. Third, his family members with whom he maintains frequent contact, are resident citizens of Afghanistan, or reside in Iran and Russia.

Some mitigating evidence weighs in Applicant's favor under Guideline B. He is a mature person, who has lived in the United States for 11 years, and has been a naturalized citizen for five years. His spouse is a naturalized U.S. citizens and resident. His two children were born in the United States. He has strong ties to the United States, as two brothers and one sister are 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. government as a linguist in a dangerous environment an undisclosed number of months. He asserted his allegiance to the United States in his Answer.

Applicant did not state in his documents whether he has an interim security clearance during his tenure with the U.S. military. While that fact is not normally to be considered in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 (App. Bd. Nov.14, 2006) 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.

The absence of any information about a current security clearance does not alter my evaluation of the total evidence, including my concerns about Applicant's

connections to his brothers-in-law. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” (AG ¶ 2 (b))

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Foreign Influence. I conclude the whole-person concept against Applicant.

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
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Subparagraphs 1.a to 1.h:	Against Applicant
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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.

PHILIP S. HOWE
Administrative Judge