



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



In the matter of:)	
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)	ISCR Case No. 10-01746
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

May 17, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by his relatives who are Afghani citizens living in either Pakistan or Canada. Clearance is granted.

Statement of the Case

On August 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 on August 28, 2010, admitting SOR ¶¶ 1.a and 1.b, and denying the remaining allegations. He requested a hearing. On November 15, 2010,

I received the case assignment. DOHA issued a notice of hearing on December 1, 2010, scheduling it for December 14, 2010. I held the hearing as scheduled. During the hearing, I received five Government exhibits, marked as Government Exhibits (GE) 1 through 5, seven Applicant exhibits marked as Applicant Exhibits (AE) A through G, and Applicant's testimony. Also, at the Government's request, I took administrative notice of the adjudicative facts set forth in 17 documents, marked as Hearing Exhibit (HE) I through XVII. DOHA received the hearing transcript (Tr.) on December 22, 2010.

Procedural Ruling

At the hearing, Department Counsel moved to amend the SOR as follows:

1. Striking the allegation set forth in SOR ¶ 1.c, and replacing it with the following: "Your mother-in-law is a citizen of Afghanistan and a resident of Pakistan";
2. Striking the allegation set forth in SOR ¶ 1.d, and replacing it with the following: "Your sister-in-law is a citizen of Afghanistan and a resident of Pakistan"; and
3. Striking the allegation set for in SOR ¶ 1.e, and replacing it with the following: "You have two brothers-in-law who are citizens of Afghanistan and residents of Pakistan." (Tr. 38)

Applicant did not object and I granted the motion.

Findings of Fact

Applicant is a 45-year-old married man with ten children ranging in age from 6 to 28. He has a high school diploma earned from a high school in Afghanistan, his native country.

In 1990, shortly after graduating from high school, Applicant fled Afghanistan to avoid the military draft. He did so by walking across the border into Pakistan. Using money given to him by his parents, wealthy Afghani elites, Applicant paid an unknown Pakistani agent \$3,000 for a fraudulent Pakistani passport. (GE 5 at 6, 12) Applicant then used this passport to immigrate to the United States. (*Id.* at 7)

Upon entering the United States, an agent from the U.S. Immigration and Naturalization Service identified the passport as fraudulent and arrested Applicant. He was detained for two months. (*Id.* at 8) Applicant retained an attorney, and was subsequently granted political asylum in October 1992. He became a naturalized U.S. citizen in 1999.

When Applicant emigrated from Afghanistan, he was married and had seven children. (Tr. 52, 57) Some time after Applicant left Afghanistan, his wife and children

moved to Pakistan. In 2001, Applicant's wife and three of his children immigrated to the United States. (Tr. 44) Four of his children remained in Pakistan. (Tr. 52, 71)

All of Applicant's family members who joined him in the United States in 2001 are now naturalized U.S. citizens. (GE 4 at 6; Tr. 44) Applicant's youngest three children were all born in the United States.

Applicant's parents are citizens of Afghanistan living in the United States. (GE 4 at 6) They are permanent legal residents. (*Id.*; Tr. 35) Applicant's sister is also a U.S. emigrant from Afghanistan with permanent legal residence status. (*Id.*) Applicant's brother is a citizen of Afghanistan living in Canada. Applicant has only spoken with him once in the past ten years. (Tr. 28).

From 1995 to 2006, Applicant worked for an air freight delivery company as a courier. From 2006 to 2008, Applicant worked for a defense contractor as a linguist. From November 2007 through April 2008, while working as a linguist, Applicant was assigned to a special operations task force in Afghanistan that was attached to "various U.S. Special Forces elements." (AE A) He worked "in the field under combat conditions as well as at the respective firebases in the rear, interpreting both live and recorded conversations. (*Id.*) His contributions "were vital to the success of [the] mission." (*Id.*) The task force was pleased with the quality of his work, issuing him a certificate of appreciation "for [his] contribution . . . during Operation Enduring Freedom."(AE D)

Shortly after returning from Afghanistan, Applicant left his job with the defense contractor and returned to his job with the air freight delivery company. He needs a security clearance because some of his deliveries are to secured facilities. (Tr. 62) Applicant has reapplied for a job with the company with whom he worked as a translator, and is seeking to return to the field to "sacrifice [himself] to this country," by returning to Afghanistan and working as a translator. (Tr. 14)

Applicant's four children who remained in Pakistan when his wife immigrated to the United States are still living there. They are clothing merchants. (Tr. 32) Applicant last travelled to Pakistan to visit these children in April 2000. (GE 5 at 26) He did not visit them when he was in Afghanistan working as a translator. (Tr. 41)

There is conflicting evidence regarding the level of contact Applicant has with his children in Pakistan. At the hearing and during an interview with an agent from the Office of Personnel Management, Applicant characterized his relationship with his children living in Pakistan as estranged. Also, he stated he has not talked to them since 2002. (GE 4 at 5; Tr. 31-32) In 2007, as part of a counterintelligence and security screening questionnaire Applicant completed pursuant to an investigation conducted by another agency, he stated that he talks with his children in Pakistan approximately once per month. (GE 5 at 25)

Applicant's mother-in-law, along with two brothers-in-law, and a sister-in-law, live in Pakistan. (Tr. 28, 55) His father-in-law is deceased. (Tr. 36) Applicant's mother-in-law

and his sister-in-law are homemakers. His brothers-in-law own a clothing store. (Tr. 28) He talks to these relatives once or twice per year. (Tr. 55) His wife talks with them approximately once per month. (Tr. 28) None of these relatives have ever travelled to the United States to visit Applicant's family. (Tr. 56)

One of Applicant's sons whom he raised in the United States is currently serving in the Marine Corps. (Tr. 23) Applicant has a son-in-law who is an Afghani-American, currently working as a translator with the armed services. (Tr. 33)

Applicant owns his home and has satisfied his mortgage. (Tr. 46) He has no foreign assets.

Afghanistan is an Islamist Republic that is emerging from decades of civil war, anarchy, and radical Islamic fundamentalism with the help of the United States. (HE I at 1-7, 13; HE III at 1) United States and coalition forces have remained active in Afghanistan since removing the Taliban from power in November 2001. (*Id.* at 4) With U.S. help, Afghanistan has endeavored to build a democracy that respects the rule of law, and seeks to rebuild the country's infrastructure. (*Id.* at 7)

These tasks remain daunting as Taliban-led insurgents and Al-Qa'ida operatives engage in continuing efforts to overthrow the government and intimidate the population through terrorism. (HE II at 1) Moreover, the government itself has engaged in human rights violations such as extrajudicial killings, torture, violence against women and religious minorities, and the use of child soldiers in armed conflict. (*Id.*) No part of Afghanistan is safe from terrorism. (HE III at 2)

Afghanistan is plagued by rampant corruption which retards economic growth and undermines the confidence of its citizens. (HE IV at 17) Because of limited infrastructure and development, drug lords operate through parts of the country with impunity. (*Id.* at 15)

Pakistan is a parliamentary federal republic. (HE IX at 1) Although it is ostensibly a U.S. ally in the fight against terrorism, several terrorist groups including Al-Qa'ida continue to operate in parts of Pakistan with impunity, and insurgents use Pakistan's northwest frontier province to organize, train, and regroup. (HE XIII at 3) Generally, Pakistan has aggressively confronted terrorists it considers inimical to its interests, but has been lackadaisical in confronting terrorists whose operations are focused upon Afghanistan or India. (HE XII at 19)

The human rights situation in Pakistan is poor. (HE XI at 1) The Pakistani government maintains several domestic intelligence services that monitor politicians, political activists, and the media. (*Id.* at 14)

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

Analysis

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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest" (AG ¶ 6). Moreover, "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" (*Id.*).

Decades of war, brutality, and theocratic rule rendered Afghanistan a failed state. As such, it became a safe haven for Al-Qa'eda, who planned the 9/11 attacks from operational bases in Afghanistan. Although U.S. forces ousted the terrorist-enabling government, and largely routed the Afghani terrorist network, elements of the ousted government and terrorists continue to wage guerilla warfare against U.S. forces.

Many of the ousted Afghani extremists are fighting the coalition forces from safe havens across the border in Pakistan with the help of sympathizers, some of whom themselves have become active participants in the insurgency. Although Pakistan is a U.S. ally, it has only marginal control over the provinces that border Afghanistan, and questions abound about its security services' commitment to the war against terrorism, or whether they provide clandestine support to the terrorists. Consequently, Applicant's relatives living in Pakistan generate a security concern under 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 county if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion."

Applicant only talks to his in-laws living in Pakistan twice per year. He has not seen his children living in Pakistan in more than 11 years. Applicant has lived in the United States for more than 20 years. He is a homeowner. One of his sons is currently serving in the U.S. Marine Corps, and a son-in-law is working in Afghanistan as a translator. Most important, Applicant has "a proven record of action in defense of the U.S.,"¹ as he risked his life under combat conditions to assist a special operations team in Afghanistan. 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 AG ¶ 8(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," apply.

In applying AG ¶ 8(c), I was concerned with Applicant's conflicting statements regarding his contact with his children living in Pakistan. However, regardless of whether he is estranged from these children or whether he talks to them once per month, it is uncontroverted that he has not seen them in more than 11 years, and did not visit them even though he was relatively close during his time in Afghanistan as a translator. Moreover, the negative security ramifications of Applicant's contradictory statements regarding contact with his children living in Pakistan are outweighed by his service to Operation Enduring Freedom as a translator in the field.

There is no evidence that Afghanistan seeks to project power through the intimidation or coercion of its citizens living in other countries. Consequently, the fact Applicant has a brother who is a citizen of Afghanistan living in Canada does not raise a security concern. Assuming that it did create a security risk, it would be mitigated by AG ¶ 8(c), because Applicant has no relationship with his brother.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

¹ISCR Case No. 07-0034 at 2 (App. Bd. Feb. 5, 2008)

(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.

I considered the whole-person concept in my foreign influence analysis when I concluded that Applicant's character, as demonstrated by his exceptional contribution as a translator to a special operations team in Afghanistan, and his ties to the United States outweigh any vulnerability to coercion generated by relatives living in Pakistan. Applicant has mitigated the foreign influence security concern.

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 - 1.e:	For Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge