



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



In the matter of:)	
)	
)	ISCR Case No. 10-02046
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

December 6, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On May 13, 2010, 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), effective after September 1, 2006.

On June 26, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a decision based on a hearing before an Administrative Judge. I received the case assignment on August 10, 2010. DOHA issued three notices of hearing: the first on October 29, 2010, for a hearing set for November 17, 2010; the second on February 24, 2011, for a hearing set for March 15, 2011; and the final one on August 3, 2011, for a hearing that was convened on August 18, 2011. Applicant had requested a continuance for the first two hearing dates because he was engaged in Afghanistan with the United States Marine Corps (USMC). At the hearing, the Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on his

own behalf and submitted Exhibit A, which was also admitted without objection. DOHA received the transcript of the hearing (Tr) on August 26, 2011. I granted Applicant's request to keep the record open until September 15, 2011, to submit additional documents, but no additional evidence was received. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts relating to the Republic of Afghanistan (Afghanistan) and United Arab Emirates (UAE). The request and the attached documents were admitted into evidence as Exhibit 5. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR, Applicant admitted SOR allegations 1.a., 1. c., and 1.d., and he denied 1.b. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 34 years old. He is unmarried and has no children. Applicant was born in Afghanistan in 1977 and moved to India with his parents and two sisters in 1992. In 1993, he moved with his family to the United States, and has been a United States resident since then. He became a naturalized United States citizen in 2004. Applicant's parents are deceased, and his two sisters are United States citizens and residents. He received a Bachelor of Science degree in 2009. Since becoming a United States citizen, Applicant testified that he has voted in United States elections and paid his proper taxes. (Tr at 57.) Applicant is employed as a linguist for the USMC, and he seeks a DoD security clearance in connection with his employment in the defense sector.

(Guideline B - Foreign Influence)

The SOR lists four allegations regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. As stated above, in his RSOR, Applicant admitted all of the allegations listed excepted 1.b.:

1.a. Applicant's cousin is a citizen of Afghanistan and serves in the Afghanistan government as a senior official. Applicant testified that his cousin used to reside in the United States with his family, and was a United States citizen, working as an engineer. In 2001, he returned to Afghanistan to help with the development of the country, first working as an adviser, and then as a high level government official. When this individual, who is Applicant's first cousin, lived in the United States as a private citizen,

Applicant saw him approximately one time a month. Applicant has had no contact, in any manner, with his cousin since 2006. (Tr at 29-33.)

1.b. It is alleged in the SOR that Applicant maintains contact with an associate who is a citizen of Pakistan and resides in the UAE. Applicant testified that this individual is a real estate broker, and his contact with this person was for the purchase of the real estate that is the subject of 1.c., below. Applicant denied this allegation in his ROR and at the hearing because his last contact with this person was in the summer of 2008. (Tr at 33-35.)

1.c. It is alleged in the SOR that Applicant and his sister own real estate in UAE that is worth approximately \$300,000 to \$350,000. Applicant testified that his sisters and he inherited a house from his father worth approximately \$400,000, and in 2005, he returned to Afghanistan and sold the house. In 2008, he and his younger sister used the proceeds of the house in Afghanistan to purchase, for an investment, two offices in a commercial building in the UAE for approximately \$350,000. (His older sister gave up her share to his younger sister and him.) Applicant testified that he and his sister would be willing to sell the property, which has diminished greatly in value, but he is not sure he will be able to sell it at this time because of its diminished value. The building, which was built after the purchase, is still not occupied. He estimated the current value of the property to be well under \$200,000. Applicant owns no other property and has no other ties to the UAE. (Tr at 35-42, 72-74.) He estimated his net assets in the United States to total slightly less than \$200,000. (Tr at 75.)

1.d. Applicant has a bank account in Afghanistan with a value of approximately \$2,300 to \$2,700. Applicant testified that this account was initially opened for the purpose of depositing the proceeds from the sale of the house in Afghanistan that he inherited from his father. He indicated that to close the account, he must be present in Afghanistan. He has attempted on several occasions to close the account over the phone, but he has been unsuccessful. He does intend to close the account when he is able to do so. (Tr at 43-45.)

Mitigation

Applicant submitted an extremely positive character letter from a Company Commander of the USMC, for whom Applicant worked as a linguist. (Exhibit A.) He described Applicant as “a dedicated worker displaying a desire to aid in the future success of Afghanistan. He is intelligent, wise, and culturally sensitive . . . He has proven to be an enormous asset to the U.S. Marine Corps and the Marines that he serves.”

Current Status of Afghanistan

Afghanistan has been an independent nation since August 1919, after the British relinquished control. A monarchy ruled from 1919 until a military coup in 1973. Following a Soviet supported coup in 1978 a Marxist government emerged. In 1979, Soviet forces invaded and occupied Afghanistan, and the Soviets withdrew in 1989. After the

withdrawal a civil war continued, and in the mid 1990s the Taliban rose to power. The Taliban committed massive human rights violations and provided sanctuary to Osama Bin-Laden and Al Quaida. After the September 11, 2001 terrorist attacks the United States forces and a coalition commenced military operations in October 2001, and forced the Taliban out of power and a new democratic government was installed in 2004.

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly frequent, sophisticated, and destabilizing. 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.

Current Status of the UAE

The UAE is a federation of emirates, each with its own ruler. The federal government is a constitutional republic, headed by a president and council of ministers. However, traditional rule in UAE is generally patriarchal, with political allegiance defined in terms of loyalty to tribal leaders. There are no democratically elected legislative institutions or political parties, and no general elections.

According to the United States State Department, the UAE has some problems with respect to human rights, including: arbitrary arrest and indefinite incommunicado detention; government restrictions on civil liberties; and a lack of judicial independence. The United States has had friendly relations with the UAE since its formation in 1971, and the UAE contributes to the continued security of the Persian Gulf, and is a partner in the campaign against terrorism, providing military, diplomatic and financial assistance. However, the UAE was one of only three countries to recognize the Taliban as the legitimate government of Afghanistan.

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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.

Section 7 of Executive Order 10865 provides that 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

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern 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 conditions that could raise a security concern and may be disqualifying. Those that could be applicable in this case include the following: 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.” Applicant’s cousin, who is a senior member of the Afghanistan government, makes AG ¶ 7(a) a concern to the Government. I find that 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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information,” is also applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that 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,” is applicable to this Applicant and controlling for the following reasons:

Applicant moved with his family to the United States in 1993, and has been a United States resident since then. He became a naturalized United States citizen in 2004. Applicant’s parents are deceased, and his two sisters are United States citizens and residents. Applicant received his college education in the United States, and has been employed only in the United States.

Applicant has had no contact with his cousin since 2006, nor any contact with the real estate agent in the UAE since 2008. In his current position as a linguist for the USMC, Applicant earns more than \$180,000 a year, and his only asset outside of the United States is part of a building that he owns with his sister, which now has an estimated value of less than \$200,000, and that he plans to sell as soon as it is feasible. His total assets in the United States are slightly less than \$200,000. Based on all of these reasons, I conclude Guideline B for Applicant.

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 the 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

