



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



In the matter of:)
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XXXXXXXXXXXXX) ISCR Case No. 10-02308
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul DeLaney, Esquire, Department Counsel
For Applicant: Ross R. Pesek, Esquire

12/30/2011

Decision

HOWE, Philip S., Administrative Judge:

On August 24, 2006, Applicant submitted his Security Clearance Application (SF 86). On January 31, 2011, the Defense Office of Hearings and Appeals (DOHA) issued 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 acknowledged receipt of the SOR on March 15, 2011. He answered the SOR in writing on March 22, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 14, 2011, and I received the case assignment on June 30, 2011. DOHA issued a Notice of Hearing on September 21, 2011, and I convened the hearing as scheduled on October 12, 2011. The Government offered Exhibits 1 through 3, which were received without objection. Applicant testified and submitted Exhibits A through D without objection.

DOHA received the transcript of the hearing (Tr.) on October 19, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

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. (Tr. at 10-12.) The request and the attached documents are included in the record as Hearing Exhibit 3. The facts administratively noticed are set out in the Findings of Fact, below.¹

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, with explanations. He denied the factual allegations in ¶¶ 1.b and 1.c of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 47 years old. He is married and has five children, including the youngest, who was born in the United States and attends kindergarten. Applicant worked as a meat packer for four years and then at a large department store for four years. Since 2006 he works as a recruiter for a defense contractor that hires linguists. Applicant owns a home in the United States and has a mortgage with a U.S. bank. Applicant's eldest son attended college until he needed to work to obtain money for tuition and now works as a defense contractor overseas. His second son works in the same capacity. His daughter attends college. His fourth and fifth children attend local schools in the United States. There is no derogatory information in the record concerning Applicant's police or financial records. He has never been fired from a job. He has never been arrested. Applicant has never used illegal drugs or been involved in an alcohol-related incident. (Tr. 19-23, 26-30, 57, 58; Exhibits 1 and 2)

Applicant has an older brother, who is a citizen and resident of Afghanistan. The brother has eight children and is unemployed. He lost his carpet business when the Taliban took control. Applicant would like to send him some money to help him, but is unable to do so because Applicant has a mortgage and five children and wife to support. Applicant has never met his brother's wife and does not know their children. Applicant's brother calls him once or twice a year to talk about family matters. (Tr. 30-32, 52-56, 71)

Applicant's one sister lives in the Netherlands. She has lived there for 20 years, but has not become a citizen because she has difficulty learning the language and passing that part of the citizenship test. (Tr. 58; Exhibit 1)

¹ Pakistan was not raised as a security risk, nor were any documents for administrative notice offered by the government concerning Pakistan.

Applicant met his wife in Pakistan in 1985 when he arrived there as a refugee. She fled to Pakistan from Afghanistan with her family in the early 1980s. Applicant and his wife were married in 1986 and had four children before winning the immigration lottery and coming to the United States in 1996. His wife and children became U.S. citizens in 2002. Applicant became a U.S. citizen in 2005 after filing his application in 2002. Applicant's citizenship application was not approved with his wife's because he received a child neglect ticket for leaving a sick child at home when he had to take his wife to work one day. (Tr. 41, 42, 47, 49-51, 70, 73; Exhibits 1 and 2)

Applicant's wife has nine siblings consisting of five brothers and four sisters. They all live in Pakistan where they went as refugees with her parents in the early 1980s. Her father is a veterinarian and lives in the United States, as does her mother. He works as a meat packer and saved his money to purchase the house in which they live with four of their children in the United States (two of Applicant's brothers-in-law and two of his sisters-in-law are under the age of 19 years.). The parents-in-law became U.S. citizens and Applicant sponsored them in that effort. His parents-in-law were Afghanistan citizens, never Pakistani citizens as alleged in the SOR. Applicant's in-laws attend high school in the same city in which Applicant lives. Three sisters-in-law and two brothers-in-law live in Pakistan as Afghanistan refugees. Of these two brothers-in-law Applicant's wife's oldest brother is the only one married. The two brothers-in-law are engineers living in Pakistan. These siblings would like to immigrate to the United States and the necessary documents are pending approval by the U.S. Government. Applicant's Answer denied his five brothers-in-law and five sisters-in-law were citizens and residents of Pakistan because they are Afghanistan citizens and refugees living in Pakistan. (Tr. 33-46, 48; Exhibits 1 and D)

Applicant does not have contact with anyone in Pakistan or Afghanistan since he came to the United States. His wife speaks only to her family members if they contact her parents and the family members are present. (Tr. 63, 64)

Applicant went to Afghanistan in 2006. He had an interim security clearance during that 18-day trip as part of a four-month period. Someone accused him of leaving the air force base without permission. Applicant was later exonerated and his accuser fired. (Tr. 38, 39, 65, 76; Exhibit 2)

None of Applicant's relatives or his wife's siblings served in the Afghanistan or Pakistan military. No relative worked for either government. (Tr. 48)

When Applicant came to the United States he used an Afghanistan passport he obtained in Pakistan at the Afghanistan consulate. That passport was valid for one year, expiring in 1997. He shredded that passport in 2002 when he applied for U.S. citizenship. Applicant's wife witnessed the destruction of that expired passport. (Tr. 68-70)

Applicant's two oldest sons submitted letters on behalf of their father. They attest to his loyalty to the United States, his honesty and integrity, and his hard work. The

recruiting manager for Applicant's employer submitted a letter stating Applicant has worked for the company for four years. He is described as intelligent and motivated. His recruitment results during the past four years have been "prestigious." The supervisor also describes Applicant as loyal, having a positive attitude, an energetic personality, and constantly striving for excellence in his recruitment efforts. (Exhibits A to C)

Afghanistan

I take administrative notice of the facts set forth in the Afghanistan Hearing Exhibits. Afghanistan is a country in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia in the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. It has about 18 million people. Afghanistan is presently an Islamic Republic that has had a turbulent political history, including an invasion by the Russians in 1979. After an Accord was reached in 1989 and Russia withdrew from the country, fighting continued among the various ethnic, clan and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive social, political, and religious policies. In October 2001, U.S. forces and coalition partners led military operations in the country after the September 11, 2001 attacks against the United States by persons affiliated with the Taliban and trained in Afghanistan. Those attacks forced the Taliban out of power by November 2001. The new democratic Government took power in 2004 after a popular election. Despite that election, terrorists and the Taliban continue to assert power and intimidation within the country. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence. (Exhibit 3)

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. (AG ¶ 2(a)) 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, 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.

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 nine conditions that could raise a security concern and may be disqualifying. Three guideline subsections apply:

(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;²

(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's one brother lives in Afghanistan with his wife and eight children. Applicant's wife has nine siblings, four of whom reside in the United States and are teenagers. Five others live in Pakistan as refugees. Applicant's father and mother-in-law live in the United States and are naturalized U.S. citizens. Applicant has contact with them because they live in the same city he does. His wife's siblings in Pakistan create a heightened risk of foreign inducement, manipulation, pressure, or coercion because Applicant lives with his wife and three children in their home (the older two sons work overseas for a defense contractor and are not home at present). Applicant and his wife helped her parents and four siblings come to the United States and are trying to arrange the immigration of her remaining siblings. Therefore, these three conditions apply on the facts.

None of Applicant's family members have positions in which they could otherwise benefit from his access to sensitive information or technology. However, under any of these disqualifying condition, security concerns in this case could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his family members in Afghanistan.

Afghanistan is a dangerous location. The Taliban rebels fight the Afghan government, and the U.S. military stationed there to assist that elected government. Attacks on U.S. government facilities and commercial properties, suicide bombers, and other terrorist acts occur around the country on a daily basis. The U.S. State Department issued warnings to travelers about going to Afghanistan. Applicant's familial relationships must be examined in that context.

² 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).

The Government produced substantial evidence of these disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in this case are:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(f) the value or routine nature of the foreign business, financial, or property interests are such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Three mitigating conditions apply. Applicant is a recruiter of linguists. His brother and he rarely have contact each year. No money is sent to the brother because Applicant cannot afford to help his sibling. Applicant's relationship with his older brother is so tangential since 1985 when Applicant departed Afghanistan that it is unlikely Applicant would be placed in a position to choose between his brother and the interests of the United States. The current positions and activities of Applicant's wife's family members in Pakistan and Applicant's brother in Afghanistan do not involve the government or military and they would have no interest in acquiring protected information. Only their physical presence creates the potential that their interests could be threatened to the point that Applicant would confront a choice between their interest and those of the United States. Hence, AG ¶ 8(a) has some application.

Applicant owns a home in the United States and is gainfully employed. His mortgage is held by a local bank where he lives. His two youngest children attend U.S. schools. Applicant's two oldest children work as employees of U.S. defense contractors overseas. Applicant fled Afghanistan in 1985 and has returned once with his employment as a recruiter for an 18-day period several years ago. Applicant wants his wife's family to come to the United States. He helped her parents and four siblings immigrate. Applicant has strong ties to the United States as shown by his preference for it in his actions from 1996 to the present day. He and his immediate family became U.S. citizens between 2002 and 2005. Applicant has no obligation, financial or otherwise, to Afghanistan, from which he has been absent for 26 years. There is no evidence in the record that Applicant owns property in Afghanistan or has foreign bank accounts. He will resolve any conflict in favor of the United States based on his actions to date. AG ¶ 8(b) applies.

Applicant does not maintain ongoing, communication with his brother and his wife's siblings in Pakistan. Hence, AG ¶ 8(c) applies, as those contacts are not frequent and are casual.

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 an 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.

According to 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. The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Two circumstances weigh against Applicant in the whole-person analysis. First, there is a significant risk of terrorism and

human rights abuses in Afghanistan. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists and friendly governments could attempt to use Applicant's one brother and his family living in Afghanistan to obtain such information. Second, some of his wife's family is located in Pakistan as refugees.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 15 years, and has been a naturalized citizen for almost five years. His spouse and children are U.S. citizens. His parents-in-law and four of their children are naturalized U.S. citizens and residents. Out of his sense of patriotism for the United States in its endeavors in Afghanistan, he worked for a defense contractor as a recruiter of translators for the U.S. military. His two sons work as translators overseas for the U.S. military. His ties to the United States, which he refers to as his country, are much stronger than his ties to his siblings or families living in Afghanistan and Pakistan. There is no evidence he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously, and he has worked diligently and impressively for the past few years since he obtained his job in an important capacity for the U.S. military efforts. His supervisors and colleagues assess him as loyal, trustworthy, conscientious, and responsible, giving him excellent evaluations and praising his dedication to the cause of freedom in Afghanistan. (Exhibits A to C) He is a good family member and U.S. citizen. After leaving Afghanistan in 1985, he never returned until he worked with the U.S. forces in 2006.

No witnesses recommended denial of Applicant's security clearance. There is no derogatory information about him in the record. There is evidence that he has successfully worked in high-risk circumstances and made significant contributions to the United States in its efforts in Afghanistan. He credibly demonstrated his allegiance to the United States. Applicant held an interim security clearance during his 2006 trip to Afghanistan without any indication that he breached security policies or procedures.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, including Applicant's commendable performance as recruiter for his current employer and a short experience as a translator and advisor in Afghanistan in 2006, I conclude Applicant has fully mitigated the security concerns pertaining to foreign influence.³ Overall, the record evidence leaves no doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

³I conclude that the whole-person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶ 8 do not apply and severs any consideration of them, I conclude the whole-person analysis standing alone is sufficient to support approval of a security clearance in this case.

conclude Applicant mitigated the security concerns arising from his foreign influence. I conclude the “whole-person” concept for 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge