



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



In the matter of:)
)
) ISCR Case No. 10-03200
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

October 31, 2011

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant is a naturalized citizen of the United States originally from Afghanistan. He maintains relationships with his father-in-law, brother, and sister who are citizens and residents of Afghanistan. Ultimately, he failed to mitigate the foreign influence concerns raised in this case. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on February 23, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) explaining that it was not clearly consistent with the national interest to

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaces the guidelines in Enclosure 2 to the Directive.

grant Applicant access to classified information. The SOR detailed the factual basis for the action under the security guideline known as Guideline B for foreign influence.

Applicant timely answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on June 2, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 31, 2011. He did not object to the items appended to the Government's brief. These items are admitted as Government's Exhibits (GE) 1 through 9. In turn, Applicant submitted a response dated August 1, 2011. This response is admitted as Applicant's Exhibit (AE A), without objection from Department Counsel. The case was assigned to me on August 16, 2011.

Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan. Applicant did not object to the request, and it was approved. The request is admitted to the record as Hearing Exhibit (HE) 1. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 48-year-old linguist who is employed by a defense contractor. He supports a mentoring program between a U.S. government agency and an Afghan government agency. He has held this position since 2008. According to his employer, Applicant's job performance exceeds expectations. The agency he supports lauds his skills as a linguist, in particular, his ability to understand complex concepts and translate them effectively.²

Applicant immigrated to the United States in 1987 from Afghanistan and became a naturalized citizen in 1993. Married since 1989, his wife is also a naturalized citizen of the United States from Afghanistan. He is the father of four children, ages 7 to 17, all of whom were born in the United States. Applicant has owned his home in the U.S. since December 1998. He does not own property in any other country.³

Applicant has three relatives with whom he maintains regular contact who are citizens and residents of Afghanistan. His father-in-law, age 95, retired as a colonel from the Afghan Army. Applicant's brother, formerly a resident alien of the U.S., was deported to Afghanistan in 2005 after serving a nine- to ten-year sentence in a U.S. prison for robbing a fast-food restaurant. Applicant and his brother immigrated to the U.S. together and lived together until his brother went to prison. His sister is a member

² GE 4 - GE 6.

³ GE 6.

of the Afghan Parliament. She has held public office from at least January 2006 to October 2010, the date Applicant signed a set of interrogatories issued to him by DOHA to gain more information about his relatives in Afghanistan. In his Answer, he denies that his sister is currently a member of the Afghan parliament. During his investigation, he has provided inconsistent statements about his family in Afghanistan and the amount of contact he has with them.⁴

Afghanistan is located in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia on 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 policies. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing 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.⁵

The country's human rights record remains poor. Problems include: extrajudicial killings; widespread official impunity; official corruption; violence and societal discrimination against women. 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.⁶

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 are to be used 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, administrative judges apply 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

⁴ GE 4, GE 6-GE 9; AE A.

⁵ HE 1.

⁶ HE 1.

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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

The security concern for Foreign Influence is set out in AG ¶ 7 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Department Counsel raised three that are potentially applicable in this case:

- (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.

Of these, only AG ¶¶ 7(a) and (b), apply.

Applicant has three relatives who are citizens and residents of Afghanistan: his father-in-law, his brother, and his sister, who is an Afghan congresswoman. The mere possession of close ties with family members living in Afghanistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. The evidence supports a finding that Applicant has maintained close relationships with his relatives living in Afghanistan. Given the perilous conditions in the country caused by the operation of the Taliban, the wide-spread corruption within the government, and the poor human rights record -- particularly towards women -- a heightened risk exists. Applicant's relationship with his sister creates a potential conflict of interest.

AG ¶ 7(d) does not apply because Applicant and his brother have not shared a residence since approximately 1995, when Applicant's brother went to prison. Furthermore, Applicant's brother has been living in Afghanistan since 2005.

The following mitigating conditions under AG ¶ 8 are potentially applicable:

- (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.

None of these mitigating conditions apply. Applicant has provided sparse information about his family in Afghanistan. He has also failed to elucidate, beyond the citizenship status of his wife and children reported in his security clearance application, his ties to the United States in a manner that make it possible for me to find mitigation under AG ¶¶ 8(a) and (c). He also failed to provide any evidence to merit a favorable finding under AG ¶8(c). Applicant did not present any evidence to rebut the presumption that his relationships with his siblings and father-in-law are not casual. Furthermore, his inconsistent statements regarding the frequency of his contact with these relatives prevent a finding that his contact with them is an infrequent as he claims.

I have considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept. Applicant has resided in the United States for 24 years and has held U.S. citizenship for the past 18 years. He and his wife have established a home and raised their family in the United States. While this is strong evidence of Applicant's ties to the United States, these facts alone are not sufficient to mitigate the foreign influence concerns raised in this case. His inconsistent statements about his family and the frequency of his contact with them do not allow a favorable credibility assessment. Under the "clearly consistent with the national interest" standard, an applicant has a heavy burden of demonstrating extenuation or mitigation of facts with negative security significance. Because he failed to meet his burden, I have no choice but to resolve any doubt about Applicant's security worthiness in favor of the national security.⁷

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
Subparagraphs 1.a-1.c.:	Against Applicant

⁷ ISCR Case No. 99-0601at 6 (App. Bd. Jan. 30, 2001); ISCR Case No. 99-0511at 8-9 (App. Bd. Dec. 19, 2000); ISCR Case No. 98-0252 at 7 (App. Bd. Sept. 15, 1999); *Dorfmont v. Brown*, 914 F.2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991)(no presumption in favor of granting or continuing a security clearance); Directive, Item E2.2.2. (any doubt must be resolved in favor of national security).

Conclusion

In light of all of the circumstances, 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.

Nichole L. Noel
Administrative Judge