



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



In the matter of:)
)
) ISCR Case No. 10-05329
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: Leslie McAdoo-Gordon, Esq.

July 21, 2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has immediate and extended family members that live in Afghanistan. He and his wife were granted asylum because they were threatened by members of the Taliban. He did not establish that it is unlikely he will be placed in a position of having to choose between the interests of his family and the interests of the United States. Through no fault of his own, Applicant was unable to mitigate the considerable foreign influence security concerns raised. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 22, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On December 22, 2010, DOHA issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence) of the adjudicative guidelines (AG).² Applicant answered the SOR on December 30, 2010, and requested a decision without a hearing. On March 2, 2011, Applicant requested the case be converted into a hearing. On March 8, 2011, he requested an expedited hearing after returning to the United States from an overseas deployment where he was working for a Government contractor in support of U.S. troops deployed to Afghanistan.

The case was assigned to me on March 11, 2011, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on March 11, 2011, convening a hearing on March 31, 2011. At the hearing, the Government offered exhibits (GE) 1 through 3. GE 3 was not admitted, but was considered for purposes of taking administrative notice. Applicant testified, and presented exhibits (AE) 1 through 26. DOHA received the transcript of the hearing (Tr.) on April 8, 2011.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.b, and 1.e. He denied the SOR allegations under ¶¶ 1.c and 1.d. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 42-year-old linguist and cultural advisor working for a Government contractor in support of deployed U.S. military forces. Except for his children, Applicant his wife, and their immediate and extended family members were born and raised in Afghanistan. Applicant graduated from high school in Afghanistan in 1985. He then took off one year from his studies to help in his father's spare parts business. He attended college in Afghanistan from 1986 until 1990, receiving a bachelor's degree in economics. After graduating from college, he again helped in his father's spare parts business for close to a year.

In 1991, Applicant travelled to Pakistan to work for an international organization providing economic relief to Afghanistan. He worked for the relief organization from 1992 until 2001, as an assistant librarian, library manager, and the resource information center manager. In 2001, a U.S. agency sponsored Applicant to come to the United States to receive computer training. He testified that when he travelled to the United States, members of the Taliban came looking for him at his place of work and his home. He feared for his and his wife's life and sought asylum in the United States, which was granted in 2001.

In 2003, Applicant graduated from a U.S. college as a laboratory technician. He worked for a large U.S. hospital from late 2003 until March 2010. In 2005-2006, he was recognized as the hospital's employee of the year among 17,000 other employees, and

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

he was placed in charge of a laboratory. Applicant continued his college education in the United States. He has accumulated approximately 64 college credit hours and his goal is to become a radiologist. He became a naturalized U.S. citizen in February 2009.

In March 2010, Applicant decided that it was his duty to serve and protect the United States, because the United States saved him and his family from the Taliban. He considers himself to be a good, loyal American citizen, and he loves living in the United States. He promised to protect the United States until the last drop of his blood. (Tr. 87)

Applicant married his Afghan wife in January 1995. She became a naturalized U.S. citizen in May 2010. They have three children, two of them (ages 12 and 11) were born in Afghanistan, but became naturalized U.S. citizens in November 2010. His five-year-old child was born in the United States.

Applicant's father served in the Afghan army and he retired with the rank of colonel prior to the Russian invasion. He is deceased. Applicant's mother, four brothers, one stepbrother, five sisters, paternal uncle, and mother-in-law are citizens and residents of Afghanistan. His father-in-law and sister-in-law are deceased.

Applicant testified that prior to taking his current job (around December 2009), he had telephonic and email contact with his mother, and some of his siblings, approximately two to three times a month. In 2005, his mother was hospitalized and he travelled to Pakistan to visit her. After submitting his December 2009 SCA, Applicant decided to limit his contact with his family because of his concerns for their safety if members of the Taliban found about his job as a linguist for U.S. military forces. Between 2005 and 2009, he had contact with his uncle three times.

In July-August 2010, Applicant's mother again was hospitalized in Pakistan and Applicant again travelled to visit her. During his visit he also met with some of his siblings. Applicant testified he has not been in contact with most of his Afghan family members since he was deployed to Afghanistan in support of U.S. troops in September 2010. He still calls his mother every three to six months. None of Applicant's siblings has ever worked for the Afghan government or has been associated with the Taliban or other groups with interests inimical to the United States.

Applicant has no property or financial interests in Afghanistan. He has a bank account in the United States. He currently rents a home, but plans to buy a home in the near future. In February 2010, he surrendered his Afghan passport to the Afghan embassy in the United States.

Applicant worked as a linguist and Afghan cultural advisor for U.S. troops deployed to Afghanistan from September until December 2010. He was issued access to classified information; however, his access was suspended pending the adjudication of the current SOR. There is no evidence that he has ever compromised or caused others to compromise classified information. Applicant is considered to be an outstanding interpreter and cultural advisor. He has excellent language skills and

capabilities. He displayed outstanding work ethic, and he was lauded as the consummate professional. Additionally, he was complimented for his compliance and awareness of security rules and procedures. His company program manager strongly recommended that Applicant receive access to classified information so that he may continue supporting deployed U.S. troops.

I take administrative notice of the following facts. Afghanistan is located in Southwestern Asia and borders Pakistan, Iran and Russia. It has been an independent nation since 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. A resistance movement eventually led to an agreement known as the Geneva Accords, signed by Afghanistan, Pakistan, the United States, and the Soviet Union, which ensured Soviet forces withdrew by February 1989. The resistance party was not part of the Accords and refused to accept it. A civil war ensued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to anarchy and the existence of warlords. The Taliban sought to impose extreme interpretation of Islam and committed massive human right violations. The Taliban also provided sanctuary to Osama Bin-Laden, Al Qaida, and other terrorist organizations.

After the September 11, 2001, terrorist attacks, demands to expel Bin-Laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power in November 2001. The new democratic government took power in 2004, after a popular election. Despite that election, terrorists including Al-Qaida and the Taliban continue to assert power and intimidation within the country. Safety and security are key issues, because these terrorists target United States and Afghan interests by suicide operations, bombings, assassinations, carjacking, assaults, and hostage taking. At this time, the risk of terrorist activity remains extremely high. The country's human rights record remains poor and violence is rampant.

Civilians continue to bear the brunt of the violence and increased attacks. Despite the loss of some key leaders, insurgents have adjusted their tactics to maintain momentum following the arrival of additional U.S. forces. It is suspected that the Taliban was most likely responsible for suppressing voter turnout in the August 2009 elections in key parts of the country. The Taliban's expansion of influence in northern Afghanistan since late 2007 has made the insurgency a country-wide threat.

Afghan leaders continue to face the eroding effect of official corruption and drug trade. Criminal networks and narcotics constitute a source of funding for the insurgency in Afghanistan. Other insurgent groups and anti-coalition organizations also operate in Afghanistan. Insurgents have targeted non-government organizations, journalists, government workers, and United Nation workers. Instability along the Pakistan-Afghan frontier continued to provide Al-Qaida with leadership mobility and the ability to conduct training and operational planning, targeting Western European and U.S. interests. The

United States Department of State has declared that the security threat to all American citizens in Afghanistan remains critical as no part of the country is immune to violence.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The government's concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

(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; and

(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.

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.³ Applicant, by himself or through his wife and his mother and siblings, has frequent contacts (at least twice a month) and a close relationship of affection and/or obligation with his mother, mother-in-law, siblings, paternal uncle, and other extended family members who are residents and citizens of Afghanistan.

These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Afghan agents, criminals, or terrorists operating in Afghanistan may exploit the opportunity to obtain information about the United States. With its negative human rights record, its government, and the violent insurgency that operates within the Afghan borders, it is conceivable that Applicant's family members could be vulnerable to coercion. Such circumstances in Afghanistan create a heightened risk.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that none of the mitigating conditions apply. Applicant's contacts in Afghanistan are not casual, infrequent, or minimal. He has extensive and close family

³ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

ties in that country. His mother, mother-in-law, siblings, and one uncle are citizens and residents of Afghanistan. Applicant and his wife left Afghanistan because he was afraid for their safety after members of the Taliban threatened him and his wife. His father served in the Afghan military. For security reasons, Applicant has not told all of his family members that he is working in support of the U.S. Government. Additionally, since September 2010, he avoided contacting his relatives in Afghanistan. Specifically, he is concerned that, if members of the community became aware of his current occupation, it may place his family members at unnecessary risk. Given his extensive family contacts in Afghanistan and the security conditions there, Applicant could be placed in a position of having to choose between the interests of foreign family members and the interests of the United States. AG ¶¶ 8(a), (b), and (c) do not apply.

In deciding whether Applicant's family members are in a position to be exploited, I considered Afghanistan's form of government.⁴ The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with his immediate relatives and extended family members living in Afghanistan do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his parents or their relatives living in Afghanistan who might be coerced by terrorists, criminals, or governmental entities in that country.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives, terrorists, or criminals from Afghanistan seek or have sought classified or economic information from or

⁴ The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States.

through Applicant, his mother, or his relatives living in Afghanistan, it is not possible to rule out such a possibility in the future. There is evidence of insurgency operations being conducted in Afghanistan against American forces. There is also evidence that Afghanistan has a dismal human rights record and has active terrorist groups operating within its borders. The conduct of terrorists in Afghanistan makes it more likely that terrorists would attempt to coerce Applicant through his relatives living in Afghanistan, if they determined it was advantageous to do so. This places the burden of persuasion on Applicant to demonstrate that his contacts in Afghanistan do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his connections to family members.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family members living in Afghanistan. Applicant feels an obligation and affection to his mother, uncle, siblings, and his wife's relatives. His concern for his mother is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence.

Applicant did not establish that it is unlikely he will be placed in a position of having to choose between the interests of his family and the interests of the United States. Additionally, Applicant's father was a colonel in the Afghan army, and Applicant and his wife were identified as possible targets by the Taliban. Thus, it is more likely that the government of Afghanistan and the Taliban are aware of his mother and his family's whereabouts. With its negative human rights record, its government, and the violent insurgency that operate within the Afghan borders, there is a heightened risk that Applicant's family members could be vulnerable to coercion.

In cases of this nature, an additional analysis is necessary. The Appeal Board has stated:

As a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. 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. 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.⁵

⁵ ISCR Cases No. 06-25928 at 4 (App. Bd. Apr 9, 2008) (internal citations omitted). See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) citing ISCR Case No. 01-03357 at 4 (App. Bd.

Applicant was deployed to Afghanistan from September until December 2010. According to his references, he complied with the security procedures and regulations in place in Afghanistan. Considering the dangerous combat conditions that exist in Afghanistan, his duties likely involved risks. However, the exact nature and extent of the possible “dangerous and high-risk circumstances” that Applicant may have faced in Afghanistan are unknown. His supervisors and co-workers indicated they have no reservations about his loyalty and dedication to the United States, and highly recommended Applicant for future positions as a linguist.

Notwithstanding, the evidence does not support a determination that his actions in dangerous circumstances in Afghanistan establishes that his ties and sense of obligation to the United State are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even under circumstances detrimental to his family.⁶ Considering the totality of the circumstances, Applicant has failed to mitigate the Guideline B security concerns.

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 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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

Applicant was born, raised, and educated in Afghanistan. He worked nine years for an international organization providing relief to Afghanistan. Because of his

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); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006).

⁶ See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006).

outstanding performance he was selected by a U.S. agency to receive training in the United States. He was granted asylum in the United States because he and his family were threatened by members of the Taliban aware of his dealings with the international organization and his trip to the United States.

Applicant considers the United States to be his home and he is in the process of establishing strong connections to the United States. He and his family have lived in the United States since 2001. He is doing well living the American dream, and his loyalties are to the United States. His spouse and two of his children are naturalized U.S. citizens, and he has a child born in the United States. He is a productive member of American society.

In 2009, Applicant volunteered to assist the United States in its war against terror. He has been working for a Government contractor and received access to classified information. He is considered to be an outstanding linguist and trusted employee. There is no evidence that he has compromised or caused others to compromise classified information.

Notwithstanding, the circumstances supporting the denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance. Applicant has immediate and extended family members that live in Afghanistan. A foreign influence decision concerning Afghanistan must take into consideration the geopolitical situation in that country, as well as the dangers existing in Afghanistan. The danger of coercion from terrorists in Afghanistan is more likely than in many other countries. The Afghan government has had significant difficulty maintaining order within its borders and in the suppression of terrorists. I have continuing doubts that Applicant's family members living in Afghanistan will remain safe from terrorist coercion should Applicant receive access to classified information. Through no fault of his own, Applicant was unable to mitigate the foreign influence security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated foreign influence security concerns.

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.b, and 1.e:	Against Applicant
Subparagraphs 1.c, and 1.d:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge