



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 10-05565
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

10/23/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Foreign Influence and Financial Considerations concerns. His foreign family members in Afghanistan place him at a heightened risk of foreign exploitation. Also, he has a significant amount of delinquent debt that he has not resolved and his financial situation appears to be getting worse. Clearance is denied.

Statement of the Case

On May 9, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), notifying him that it was unable to grant him a clearance because information from his background investigation raised the security concerns under Guideline B (Foreign Influence) and Guideline F (Financial Considerations).¹ Applicant answered the SOR on June 14, 2012 (Answer), and

¹ DOHA took this action under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

requested a hearing before an administrative judge to present evidence to establish his eligibility for a clearance.

On July 31, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on August 8, 2012 and, after coordinating with the parties, scheduled the hearing for September 12, 2012.

At hearing, Department Counsel offered Government Exhibits (GE) 1 – 5, which were admitted without objection. Department Counsel also submitted, without objection, official, unclassified documents regarding Afghanistan for administrative notice. These documents were marked as Exhibits (Exh) I – VI. Applicant testified and offered Applicant's Exhibit (AE) A – G, which were admitted without objection. At the conclusion of the hearing, I left the record open to provide Applicant an opportunity to submit additional matters for my consideration. Applicant submitted AE H, a one page e-mail, without attachments, dated September 27, 2012. This exhibit was also admitted without objection. DOHA received the transcript (Tr.) on September 20, 2012.

Findings of Fact

Applicant is in his early forties. He was born in Afghanistan and immigrated to the United States when he was a teenager. He graduated from high school and received his degree in information technology (IT) in the United States. He is a naturalized U.S. citizen and is married with two children, who were born in the United States. He has lived at the same address in the United States for nearly four years, and has not returned to Afghanistan since immigrating to the United States over two decades ago. (Tr. at 32, 43; GE 1; AE G)

Applicant's in-laws and two brothers-in-law are citizens and residents of Afghanistan. His father-in-law used to work for the Afghan government, but has been unemployed for some time. Applicant's mother-in-law works as a public school teacher, while his brothers-in-law work for non-governmental organizations in Afghanistan. Applicant's wife is very close to her Afghan family and speaks to them whenever she can. (Tr. at 32, 40-43, 71-72; GE 2; AE C - D)

Applicant worked for the federal government as a contractor from 1999 to 2005. He was fired for accessing pornographic websites at work.² He then decided to pursue the "American dream" of opening and operating his own business. He used his savings to purchase a business and claims that he overpaid for the business because he was provided fraudulent financial papers, which painted a healthier financial outlook for the business than existed. He sued the previous owner, but his lawsuit was unsuccessful. Applicant's business was a successful endeavor until approximately 2008, when the economy suffered a downturn. Applicant testified that the proverbial "nail in the coffin" occurred in 2009, when a giant discount retailer opened up across the street from his business and he was unable to compete. His income went from about \$90,000 a year to

² I only considered this evidence in assessing Applicant's case in mitigation and his credibility, not as a basis for denial.

approximately \$20,000. He exhausted his savings and turned to credit cards to keep his business afloat, but to no avail. Applicant's business closed in about January 2010. (Tr. at 32-34, 43, 50-57, 63-67; GE 1 at 24)

Applicant has accumulated a significant amount of business and non-business related delinquent debt since 2009. The SOR lists over \$18,000 in non-medical debts,³ including a phone bill for less than \$250 from 2009.⁴ (Tr. at 57-63) At hearing, Applicant submitted a budget showing that, after paying his monthly expenses, he has nearly \$700 left over each month to pay his delinquent accounts. (AE A) He previously advised DOHA, in December 2011, that his monthly net remainder was nearly \$300. (GE 2, *Personal Financial Statement*) Despite the favorable, optimistic financial pictured portrayed by these documents, Applicant testified that he and his wife's combined monthly income is about \$3,000 and their monthly expenses "comes close to over \$4,300," leaving them with a monthly negative cash flow of between \$1,000 and \$1,500. (Tr. at 37, 47-48, 68-71) Applicant contacted a debt repayment firm shortly before the hearing, but is unable to afford the monthly payments required to pay his debts. He plans on filing for bankruptcy to resolve his debts. He was previously granted a Chapter 7 bankruptcy discharge in 2002.⁵ (Tr. at 46-48; GE 2, *Bankruptcy Order*; AE H)

After his business folded, Applicant worked several jobs, including as a taxi driver. He currently works as a contractor for the U.S. Government providing cultural awareness and language classes to military personnel stationed in the United States. He requires a clearance to work on other U.S. Government contracts in deployed locations. Although he is aware of the potential risk involved, Applicant is willing to take such risk. He is motivated by a desire to repay what he sees as a great debt to the United States for the life it has afforded him and his family, and to provide for the safety and security of U.S. troops. (Tr. at 67-77; GE 2) He has received numerous commendations from the U.S. military for his current work. (AE E) His friends and colleagues submitted letters noting his reliability and trustworthiness. (AE F)

Following the September 11 attacks, U.S. and coalition forces liberated Afghanistan from the terror imposed by the Taliban and its terrorist allies. (Exh I at 5) "Afghanistan has made significant progress since the Taliban were deposed in 2001, but still faces daunting challenges, including fighting an insurgency, preventing the return or resurgence of al-Qaida, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic, and political infrastructure." (Exh II at 1) The terrorist threat posed by Al-Qa'ida and others remains high. No part of Afghanistan is considered safe, "and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other Western nationals at any time." (Exh VI at 1)

³ SOR ¶¶ 2.a, 2.b, 2.f – 2.h.

⁴ SOR ¶ 2.f.

⁵ Applicant's previous bankruptcy was not alleged in the SOR and, thus, was only considered in assessing his case in mitigation.

The Afghan Government itself is besieged with significant internal problems, to include corruption and human rights violations. (Exh III; Exh IV at 10)

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 available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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. "A clearance adjudication is an applicant's opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country."⁶

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.

⁶ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

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.”

Analysis

Guideline B, Foreign Influence

The foreign influence concern is set forth at AG ¶ 6, 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.

Applicant’s familial ties to Afghanistan raise the foreign influence concern and establish the following disqualifying conditions 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 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
- (c) 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 foreign familial ties do not end the foreign influence analysis. AG ¶ 8 sets forth a number of mitigating conditions that could mitigate the concern. I have considered all the mitigating conditions under AG ¶ 8 and only the following were potentially raised by the evidence:

- (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.

Applicant has lived, worked, and raised his family in the United States. He has not returned to Afghanistan since he immigrated to the United States over two decades ago. He sincerely and forcefully testified the he is willing to place his own life at risk for the security of this nation, and has received accolades for his work training U.S. troops deploying overseas. However, his strong familial connections to Afghanistan raise a significant risk that he could be subjected to foreign influence from those forces within Afghanistan whose interest are inimical to the United States.⁷ Applicant's deep and longstanding relationships in the United States does not obviate the threat of foreign influence, especially in light of the nature of the threat posed by the Taliban and other extremist elements operating within Afghanistan and his foreign family's vulnerability to such threat.⁸ Accordingly, I find that Applicant failed to mitigate the foreign influence concern. His foreign familial connections remain a security concern. At the same time, I note that this finding is "not a comment on Applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member," and any doubt raised by an applicant's circumstance must be resolved in favor of national security.⁹

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to

⁷ ISCR Case No. 11-04980 at 4 (App. Bd. Sep. 21, 2012) ("There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse.")

⁸ See e.g. ISCR Case No. 09-08099 (App. Bd. Sep. 14, 2012) (Despite his deep and longstanding relationships in the United States, applicant failed to mitigate the Guideline B concern because he has family members who are citizens and residents of Afghanistan).

⁹ ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

“This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts.”¹⁰ The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant accumulated a significant amount of debt after his business failed in 2009 and his income dropped significantly.¹¹ However, he has not taken any concrete steps to address his debts and his financial situation appears to be getting worse. Applicant’s situation raises the financial considerations concern and establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow . . .

However, an applicant’s past or current indebtedness is not the end of the analysis because “[a] security clearance adjudication is not a proceeding aimed at collecting an applicant’s debts. Rather, it is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness.”¹² Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

¹⁰ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See also ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012) (The Guideline F concern “is broader than a concern that an applicant might commit criminal acts in order to pay off his debts. Rather, Guideline F requires a judge to consider the totality of an applicant’s circumstances—the reasons underlying his financial problems and his efforts to address them—in order to arrive at a conclusion as to whether the applicant possesses the judgment and self-control required of those who have access to national security information.”)

¹¹ Applicant’s medical-related debts (¶¶ 2.c – 2.e and 2.i) and the debt referenced in ¶ 2.j, which was paid prior to issuance of the SOR, do not raise a concern and are decided in Applicant’s favor.

¹² ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial situation was due, in part, to matters beyond his control, namely, a business failure. However, in the three years that have passed since his business failed, Applicant has yet to take any concrete steps to address the vast majority of his debts. Furthermore, Applicant's financial situation has not yet stabilized and appears to be getting worse, as evidenced by his testimony that he is running a negative monthly cash flow of \$1,000 to \$1,500. He submitted no documentation of having received financial counseling and, other than paying one of the minor debts listed in the SOR, he did not submit documentary evidence of having attempted to resolve his longstanding debts. Applicant failed to demonstrate that any of the mitigating conditions under AG ¶ 20 apply and his financial situation continues to raise a concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹³ I gave due consideration to Applicant's substantial ties to the United States, as well as his educational and professional accomplishments. However, "[e]ven good people can pose a security risk because of facts and circumstances not under their control,"¹⁴ and in this case Applicant's deep familial ties to Afghanistan pose a heightened a risk of foreign exploitation that I must resolve in favor of national security. Furthermore, although there were matters beyond his control that led to his current financial situation, Applicant failed to demonstrate that he has placed his financial house in order. Overall, the evidence leaves me with unresolved questions and doubts regarding Applicant's current eligibility for a security clearance.

¹³ (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.

¹⁴ ISCR Case No. 01-26893 at 9-10 (App. Bd. Oct. 16, 2002).

Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline B (Foreign Influence): AGAINST APPLICANT

 Subparagraph 1.a – 1.b: Against Applicant

Paragraph 2, Guideline F (Financial Considerations): AGAINST APPLICANT

 Subparagraphs 2.a – 2.b, 2.f – 2.h: Against Applicant

 Subparagraphs 2.c – 2.e, 2.i – 2.j: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is hereby denied.

Francisco Mendez
Administrative Judge