



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 10-09208 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

07/06/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on September 17, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on September 20, 2011, 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on October 4, 2011 and answered it on October 7, 2011. Applicant retained counsel and requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on January 23, 2012. I received the case assignment on May 1, 2012. DOHA issued a Notice of Hearing on May 17, 2012, and an amended notice of hearing on May 25, 2012. I convened the hearing as scheduled on June 7, 2012. The Government offered exhibits marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE P, which were received and admitted into evidence without objection. The record closed on June 7, 2012. DOHA received the hearing transcript (Tr.) on June 24, 2012.

Procedural and Administrative Notice Rulings

Notice

Applicant received the hearing notice less than 15 days before the hearing. (Tr. 9.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. After consulting with counsel, Applicant affirmatively waived his right to the 15-day notice. (Tr. 9)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Afghanistan. The request was not admitted into evidence, but was included in the record as Hearing Exhibit 1. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 57 years old, works in Afghanistan as linguist, media advisor, and cultural advisor for a Department of Defense contractor. He began his work in September 2009 for another company and with his current employer in July 2010. To perform his work, he must live and work in Afghanistan.¹

Applicant was born and raised in Afghanistan. In December 1975, he started school in Iraq to learn petroleum production. Upon completion of his education in Iraq, he moved to Kuwait in August 1977, where he worked in construction until December

¹GE 1; GE 5; Tr. 27-29, 45-46, 50.

1984. While in Kuwait, the Afghanistan government decided not to extend his passport. Because of the Russian invasion of Afghanistan in the early 1980s and the resulting problems in Afghanistan, Applicant did not want to return. He initially sought asylum in the United States, but the United States denied his request. He immigrated to the United States in January 1985 on a visa and has lived in the United States since then. Applicant became a U.S. citizen in 2000.²

Applicant's wife was born in Afghanistan and immigrated to the United States with her parents and siblings before Applicant met her. She is a U.S. citizen. She has no immediate family in Afghanistan. Applicant and his wife married in 1990. They have two daughters, ages 21 and 18, who were born in the United States and live in the United States. His oldest daughter attends college, and the younger daughter will begin college in August 2012.³

After arriving in the United States, Applicant worked as a field engineer for eight years, as a machine operator for over six years, and in the mental health field for ten years. His wife works for the U.S. Government.⁴

Applicant and his wife purchased their home in 2005 and a condo in 2010. All their assets are in the United States. They do not own any property in Afghanistan nor do they hold any bank accounts or other assets in Afghanistan. He will not inherit any property or money from any relatives still in Afghanistan.⁵

Applicant's parents and his father-in-law are deceased. His mother-in-law, brother-in-law, and two sisters-in-law live in the United States. Applicant's two brothers and three sisters are citizens and residents of Afghanistan. His oldest brother, age 67, retired from the Afghan police force in 1987 as a colonel. Applicant visited with this brother in 2007 and 2011 in Afghanistan. He talks with this brother about once a month, but he does not know if this brother receives a government pension. His 60-year-old brother works as a teacher in Afghanistan. He last visited with this brother in 2007 and talks with him about once a year. Applicant sends this brother between \$100 and \$150 once or twice a year for financial support. Applicant last saw his three sisters in 2007, when he visited Afghanistan. He does not talk with them on the phone or communicate with them by e-mail. He knows in what Afghanistan cities they live, but not their street addresses. They are housewives. He does not know the occupations of their husbands. Applicant visited with his Afghan cousin, a civil engineer working for the Afghanistan government, and a friend living in Afghanistan in 2007. He does not communicate with his cousin or friend. His closest friend, who is also a contractor in Afghanistan, lives

²GE 1; GE 5; AE L; Tr. 48.

³GE 1; GE 5; AE H; AE I; Tr. 24-27.

⁴AE I; Tr. 38-39.

⁵AE F; AE G; Tr. 38-40, 74.

near Applicant in the United States. They visit with each other when they are in the United States, but do not have any contact with each other in Afghanistan.⁶

Applicant's oldest brother knows that Applicant is working in Afghanistan, but Applicant has not discussed his job with this brother. Applicant trusts this brother to keep this information confidential. Applicant has not told his other siblings, his cousin or his friend that he is working in Afghanistan. Because his 60-year-old brother and his family live in insurgency territory, Applicant will not tell them he is working in Afghanistan for their safety and his. Safety is the primary reason he has not and will not tell his other Afghanistan family members that he is working in Afghanistan. For this same reason, he has not had contact with his Afghan family members, except his oldest brother, since he began working in Afghanistan in 2009. After receiving permission from his superiors, Applicant met with his older brother in a public place near his residence.⁷

Since 2009, Applicant has lived and worked in Afghanistan. He lives in a compound with other contractors. Local Afghani workers enter and exit the compound throughout the day. Because Applicant is of Afghani descent, his entering and leaving the compound does not stand out. Along with several others, he travels about four miles from his compound to his work site by armored truck. He works 12 hours a day, leaving him with little time for personal activities.⁸

In May 2012, a car bomb exploded at his compound, about 300 feet from his room. He was not injured, but one security guard was killed and several pedestrians, including children were injured. The night before the hearing, Applicant and his family talked about his return to Afghanistan after this incident. His family does not want him to return. Applicant explained his reasons for returning to work in an area he knows is dangerous. The United States gave him a good life. His job is a way for him to give something back. He also wants his family in Afghanistan to be safe and secure. The only way to secure this goal is to fight and defeat the terrorists. Applicant remembers the many hardships his family suffered during the Russian invasion of Afghanistan in the early 1980s. This experience has no concerns for him today, but is one of the reasons for his decision to work against terrorists.⁹

Applicant has never been approached by an official of the Afghanistan government. He has no concerns about problems from the Afghanistan government; however, he has a concern about terrorists. If he is approached by someone to give up secrets, he would tell his supervisor and call the police. If placed in a position to choose between his family in the United States and his family in Afghanistan, he would chose his family in the United States. He cannot help his family in Afghanistan if they are

⁶GE 1; GE 5; Tr. 35-43, 51, 55-65.

⁷Tr. 51-54, 68-69, 77.

⁸Tr. 78-79.

⁹Tr. 33-34, 39, 65-66, 74.

attacked or pressured about his work. To his knowledge, none of the members of his family have been targeted by terrorists or the government.¹⁰

Applicant provided five letters of recommendation from his supervisors, co-workers, and a friend. They describe him as honest and hardworking. He is a peace loving man of integrity. He is a reliable employee, who is dedicated to supporting the United States' mission in Afghanistan. All think highly of Applicant. Applicant met the Secretary of Defense during a visit to Afghanistan. He received a medal from the Secretary of Defense as a souvenir of their meeting.¹¹

I take administrative notice of the following adjudicative facts. Afghanistan is an Islamic Republic and emerging democracy. With the support of the U.S. and other nations, its new government endeavors to build a new system of government and to rebuild the country's infrastructure. Its Army and police force are well trained. It continues to face significant challenges from the insurgency and terrorist organizations supported by the ousted Taliban and Al Qa'ida. The government is not complacent about the terrorist threat or the insurgency; rather it actively seeks to eliminate both with the assistance of the U.S. and NATO. The new government is working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community, has signed a "Good Neighbor" declaration with six nations bordering it, and promotes regional cooperation. The U.S. supports the emergence of a broad-based government in Afghanistan. Sometime ago, the leaders of both countries concluded a strategic partnership agreement committing to a long-term relationship between both countries. Despite its differences with the U.S., Afghanistan continues to seek U.S. support as it moves forward towards democracy and stability. None of the documents offered in support of the request for administrative notice indicate whether Afghanistan is an active collector of intelligence information.

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 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, these guidelines are applied 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,

¹⁰GE 2; Tr. 32-33, 50, 71.

¹¹AE A - AE E; AE O; AE P; Tr. 27-28.

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.

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 applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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.

Applicant's immediate family, which includes his wife and his children, live with him in the United States. His in-laws are residents of the United States. Thus, no security concern is raised by these family members. His sisters and brothers are citizens and residents of Afghanistan. Applicant maintained a normal familial relationship with his siblings until he started working in Afghanistan. Since 2009, he has limited his telephone contact with four of his siblings to once a year or not at all because he does not want to place them in harm's way. He last visited with them in 2007. He talks with one brother by telephone once a week and visited with him in Afghanistan in 2011. He does provide his other brother with small amounts of money when needed. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members who may be threatened by terrorists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his family members as well as the activities of the government of Afghanistan and terrorist organizations within this country. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his siblings in Afghanistan raise a heightened risk of security concern because the terrorist threats to safety and security are real and of great concern. The evidence of record fails to show that the Afghanistan government engages in espionage activities in the United States or that it targets U.S. citizens in the United States or Afghanistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Afghanistan government will seek classified information is low.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Afghanistan cause security concerns, I considered that Afghanistan and the United States have a close relationship, and that Afghanistan and the United States are working together in the fight against terrorism

and to continue developing democracy in Afghanistan. There is no evidence that the Afghanistan government targets U.S. citizens for protected information. The human rights issues in Afghanistan continue to be a concern, and the terrorist organizations, not the Afghanistan government, target U.S. citizens and interests in Afghanistan. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family members in Afghanistan. Because of the significant activities of terrorist organizations in Afghanistan, Applicant's presence in Afghanistan and his occasional contacts with his family raise a heightened risk under AG ¶¶ 7(a) and (b).

AG ¶ 8 describes the mitigating conditions that could raise security concerns. I have considered all the conditions, and the following 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. interests; 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's normal relationship with his family members is not a basis to deny him a security clearance; however, his burden of proof on mitigation requires him to provide information that shows that his family is not subject to coercion. His family members have never held a political position, although one brother works for the Afghanistan government and one brother is a retired Afghanistan police officer. His family members have not been targeted by the Afghanistan government or terrorists. His family members in Afghanistan have not suffered any abuses from the Afghanistan government or been threatened by terrorists, although his 60-year-old brother and his family live in insurgent territory. His immediate family members are citizens and residents of the United States. He owns no property nor does he have financial assets in Afghanistan. Since beginning work in Afghanistan, Applicant has taken specific care not to contact four of his siblings to let them know he is working in Afghanistan for their safety. Balancing these factors as well as the efforts by the Afghanistan government in attacking terrorism within its borders, and the lack of evidence that the Afghanistan government targets U.S. citizens for protected information against Afghanistan's human rights record, I find that Applicant would resolve any conflict in favor of the U.S. interests. Likewise, any threats by terrorists organizations against Applicant's family in

Afghanistan would be resolved in favor of U.S. interests because Applicant will be unable to help his family members in Afghanistan if there are any threats to them. His loyalties are to the United States, not Afghanistan or terrorist organizations. Applicant has mitigated the Government's security concerns as to his family contacts specified in the SOR under AG ¶¶ 8(a) and 8(b).

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.

Under 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 decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant immigrated to the United States more than 27 years ago and became a U.S. citizen 12 years ago. His immediate family lives in the United States and wants him to remain in the United States and not return to Afghanistan because of the dangers. Applicant is grateful for the life provided to him in the United States and wants to give something back to his adopted homeland. He also wants his family in Afghanistan to live in safety. To accomplish both goals, he agreed to work as a linguist, media advisor, and cultural advisor in Afghanistan, a war zone. Despite the attack on his compound and the close contact he came with injury or death and over the objections of his family, he decided to return to Afghanistan to continue his work on behalf of the United States. His willingness to place himself in harm's way weighs heavily in his favor as it reflects his loyalty to the

United States. He has not contacted four of his siblings in Afghanistan since he started working there in 2009 for their safety and his. His caution reflects his understanding of the dangers in Afghanistan. He cannot help his Afghanistan family members should they be threatened by terrorists and will not do so. Afghanistan is dangerous because of the terrorist activities of the Taliban and Al Qa'ida. Even so, Applicant is willing to risk his life and return to continue his work for the United States military.¹² 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 conclude Applicant mitigated the foreign influence security concerns under Guideline B.

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline B: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | 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.

MARY E. HENRY
Administrative Judge

¹²See ISCR Case No. 07-00034 (App. Bd. Feb. 5, 2008).