



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



In the matter of:)	
)	
)	ISCR Case No. 10-09480
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr. Esquire, Department Counsel
For Applicant: *Pro se*

01/02/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign influence security concern, but failed to mitigate the financial considerations security concern. Clearance is denied.

Statement of the Case

On November 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline B, Foreign Influence. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on March 6, 2012. He admitted subparagraphs 1.d through 1.g, 1.j, 1.k, 1.n, 1.q., 1.s, 1.u, and all of the allegations in Paragraph 2. He denied subparagraphs 1.a through 1.c, 1.h., 1.i, 1.l, 1.m, 1.o, 1.p, 1.r, and 1.t. He

requested an administrative determination instead of a hearing. On May 3, 2012, Department Counsel prepared a File of Relevant Material (FORM). Applicant received it on May 4, 2010, and filed a response on October 1, 2012. The case was assigned to me on October 24, 2012.

Preliminary Ruling

At Department Counsel's request, I am taking administrative notice of the facts encapsulated within seven documents marked as Court's Exhibit's (CE) I to VII.

Findings of Fact

Applicant is a 41-year-old married man with three children, ages nine, eight, and four. Applicant has a high school education. (Item 6 at 15) He was born and raised in Afghanistan, immigrating to the United States in 2003. He became a naturalized U.S. citizen in 2009. Since October 2009, Applicant has worked as a contract linguist and cultural advisor in support of Operation Enduring Freedom in Afghanistan.

Applicant is highly regarded on the job. According to an officer with whom Applicant works, he completed the same rigorous mountain warfare training as his U.S. Marine counterparts before being deployed. Once in Afghanistan, he "went on daily combat missions, taking the same risks as his Marine brothers." When in the field, he often used his cultural background to defuse tensions between Afghan nationals and the U.S. troops. When he was not on patrol, he assisted officers with translations during staff planning sessions. (Item 4 at 6) According to another operations officer, Applicant's "easy-going demeanor, strong work ethic, and charismatic personality made him a force multiplier when working with Afghan nationals." (Item 4 at 5)

In April 2011, Applicant was awarded a certificate of appreciation. He was credited with, among other things, using his excellent translation skills to help synchronize combat operations between U.S. and Afghan military personnel. (Item 4 at 4)

Applicant's parents are deceased. He has four sisters and one brother. His brother lives in Germany and his oldest sister lives in Australia. His remaining sisters live in Afghanistan. Two of his sisters are teachers and one works in transportation. The record contains no information elaborating further about the type of transportation services she provides. Another brother disappeared in 1975, and his whereabouts remain unknown. (Item 6 at 34-36; Item 7 at 1)

Applicant's sisters living in Afghanistan are married. One brother-in-law is a taxi driver, another is a teacher, and the third brother-in-law is self-employed. (Item 7 at 2) Applicant's wife is a naturalized U.S. citizen who lives with him in the United States. Applicant's father-in-law is deceased. It is unclear from the record whether Applicant's mother-in-law is alive. As of the date Applicant completed the security clearance

application, she was alive and living in Afghanistan. However, she is not listed as one of the relatives that generates a security concern on the SOR.

Applicant has not seen any of his relatives living in Afghanistan for more than 12 years. (Item 8 at 3) They talk once or twice per year.

The United States has more combat troops deployed to Afghanistan than to any other foreign country. This extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to citizens and residents of Afghanistan. (CE I at 13)

Afghanistan has serious problems including a corrupt government, human rights abuse, and terrorism. (CE VII at 54) Although the effectiveness and capacity of the insurgency in Afghanistan has been downgraded, the security situation in parts of Afghanistan remains volatile. (CE VII at 1) It is unsafe to travel anywhere in Afghanistan. (CE VII at 1)

After immigrating to the United States in 2003, Applicant worked part-time for an auto repair shop. From April 2004 to September 2007, he worked full-time delivering pizza, and from October 2007 to October 2009, he worked full-time as a bus driver. (Item 6 at 19-20)

In January 2000, Applicant purchased a house for \$400,000. Over the next five years, he accrued approximately \$64,000 of delinquent debt, mostly consisting of credit cards that he used to pay for gas, groceries, and bills. (Item 8 at 4)

Between 2007 and 2012, Applicant fell behind on his mortgage payments. Since the date of the SOR, Applicant has lost his home to foreclosure. It is unknown from the record whether Applicant owes a deficiency from the foreclosure. According to Applicant, "the bank never gave [him] a second chance to improve [his] financial situation." (Item 2 at 5)

In February 2012, Applicant retained a debt consolidation company who helped him develop a payment plan. Approximately \$31,000 of debt owed to the creditors listed in subparagraphs 1.d through 1.g, 1.j, 1.k., 1.n, 1.q, 1.s, and 1.u, is included in the plan. To date, Applicant has satisfied the creditors listed in subparagraphs 1.e, 1.j, and 1.s. Also, he satisfied subparagraph 1.r, a debt not included in the payment plan in the amount of \$300, and a debt not listed in the SOR in the amount of \$727, (Response at 1, 9) In sum, Applicant has satisfied delinquent debts totalling \$7,000, and intends to complete the payment plan by 2015. Applicant offered no documentary evidence supporting his contention that the remaining \$33,000 of debt alleged in the SOR, which he denied, was not his responsibility.

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline B: Foreign Influence

Under this guideline, “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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.” (AG ¶ 6) Moreover, “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.” (*Id.*) A “current and accurate assessment of the ‘geopolitical situation’ and the security/intelligence profile of the [foreign] country vis-a-vis the United States is crucial in Guideline B cases.” (ISCR Case No. 07-05686 at 4, footnote 3 (App. Bd. November 12, 2008))

Applicant’s contacts with several relatives living in Afghanistan, a chaotic and dangerous country with terrorists and insurgents that are brutalizing the population and engaging in combat with U.S. troops triggers the application of 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.”

Applicant immigrated to the United States less than ten years ago, and has only been a naturalized U.S. citizen for approximately three years. There is little record evidence of his interpersonal relationships within the U.S. to compare to his

relationships in Afghanistan. However, Applicant is a translator and cultural advisor who for several years has worked alongside U.S. troops in dangerous combat operations. Also, he has used his translation skills to mediate sometimes tense exchanges with Afghan civilians. In doing so, he exposed himself to the same risks as the troops. Given his proven history of services for the United States under these circumstances,¹ AG ¶ 8(b) applies:

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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant has not seen any of his Afghan relatives in more than 12 years. His contact with them is limited to phone calls twice per year. Consequently, AG ¶ 8(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," is also applicable. Applicant has mitigated the Guideline B security concerns.

Guideline F: Financial Considerations

Under this guideline, "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 protect classified information" (AG ¶ 18). Moreover, "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds" (*Id.*). Applicant's financial delinquencies trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations." The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the

¹ISCR Case No. 04-02511 at 4 (App. Bd. Mar 20, 2007).

past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The record does not support Applicant's contention that unemployment in 2007 contributed to the accrual of his financial delinquencies. AG ¶ 20(b) is inapplicable.

With the help of a debt counseling agency, Applicant organized his delinquencies, negotiated settlements and began paying them. To date, he has satisfied approximately \$7,000 of delinquent debt, including subparagraphs 1.e, 1.j, 1.r and 1.s, which he has resolved entirely. I resolve these subparagraphs in his favor. Also, the amount of debt Applicant has satisfied is sufficient to trigger the application of AG ¶¶ 20(c) and (d).

Applicant denied delinquencies totalling more than \$33,000, and offered no evidence of any steps taken to dispute them with the alleged creditors. Moreover, since the issuance of the SOR, Applicant's home has been foreclosed. It is unknown from the record whether Applicant owes a deficiency from the foreclosure. AG ¶ 20(e) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant is a highly-valued translator who is risking his life in support of Operation Enduring Freedom. Although his relationship with his relatives in Afghanistan generates a heightened risk, his service as a translator and lack of contact with his relatives in Afghanistan mitigate the foreign influence security risk.

Applicants financial problems, however, are more problematic. He denied multiple SOR debts totalling more than \$33,000 and offered no evidence of the basis of his denials. Moreover, I remain troubled by the recent foreclosure of his home. Under these circumstances, the progress made in reducing the acknowledged debts is not sufficient to overcome the negative security ramifications of the debts that he denied without explanation and the recent foreclosure.

Upon considering this case in light of the whole-person concept, I conclude Applicant has failed to mitigate the security concern raised by his financial problems.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f - 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k - 1.q:	Against Applicant
Subparagraphs 1.r - 1.s:	For Applicant
Subparagraphs 1.t - 1.u:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

MARC E. CURRY
Administrative Judge