



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



In the matter of:)
)
) ISCR Case No. 11-00068
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

December 12, 2011

Decision

DUFFY, James F., Administrative Judge:

Applicant has not mitigated the Government’s security concerns under Guideline B (Foreign Influence). Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On May 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B. 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) implemented on September 1, 2006.

On May 10, 2011, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.¹ On August 28, 2011, the Government compiled its File of Relevant Material (FORM). The FORM contained documents identified as Items 1 through 6. In Item 6, the Government requested that I take administrative notice of certain facts about Afghanistan and provided official U.S. documents as reference materials.

On September 6, 2011, DOHA forwarded to the Applicant a copy of the FORM with instructions to submit any additional information and objections within 30 days of receipt. Applicant received the FORM on September 20, 2011. Applicant did not submit a response. The Government's exhibits in the FORM are admitted into the record, and the request for administrative notice is granted. The facts administratively noticed are set out below in the findings of fact. The case was assigned to me on November 29, 2011.

Findings of Fact

The SOR contains three allegations. The allegations assert that Applicant has a mother, two sisters, and a cousin who were citizens and residents of Afghanistan and that she sends her mother \$100 to \$200 every one or two months to help support her. Applicant admitted each of the SOR allegations. Her admissions are incorporated herein as findings of fact.²

Applicant's Background and Foreign Contacts

Applicant is a 46-year-old linguist employed by a defense contractor. She has worked for her current employer since December 2009. She attended two schools in Canada between September 1997 and July 2000. During that time period, she obtained a high school diploma or equivalent certificate in July 1998 and a travel and tourism diploma in September 2000. She is married and has three sons, ages 23, 26, and 28. This is the first time that she has sought to obtain a security clearance.³

Applicant was born in Afghanistan. In 1982, she married in Afghanistan. This was an unarranged marriage. During an interview, she indicated that her family attempted to kill her and her husband in 1982. Specifically, she stated that her older sister attempted to kill her by physically assaulting her. Details of the assault are unknown. The attempt on her life was apparently because of her unarranged marriage, although the documents in the FORM do not explicitly state the reason for the assault upon her. After

¹ Item 2.

² Items 1, 2.

³ Item 4.

that incident, she lived with her husband's family for about a year or two. In mid-1983 or 1984, she and her husband lived in their own home in Afghanistan.⁴

In 1994, Applicant, her husband, and their children fled Afghanistan because of a war. They first lived in Pakistan. In 1995, they moved to Canada. She became a Canadian citizen (date unknown). Her Electronic Questionnaire for Investigations Processing (e-QIP) dated December 14, 2009, reflects that she started living in the United States in October 2000. She first lived in State A for about three years, moved to State B where her home was foreclosed in about 2009, and then moved to State C. She became a U.S. citizen in May 2009 and currently has a U.S. passport. She stated that she has no foreign business, financial, or property interests and indicated that she has cars and bank accounts in the United States valued at about \$85,300.⁵

Applicant was issued a Canadian passport in February 2005. In December 2009, she canceled her Canadian passport at the Canadian Embassy in Washington, DC. She initially thought that she had renounced her Canadian citizenship by canceling her Canadian passport. She later was informed that such action did not result in the renunciation of her Canadian citizenship. During her Office of Personnel Management interview in July 2010, she indicated that she intended to go to a Canadian consulate to renounce her Canadian citizenship because she is now a U.S. citizen. No documentation was provided to confirm that she had renounced her Canadian citizenship.⁶

Applicant's husband and children were born in Afghanistan. In her e-QIP, she listed that her husband was a Canadian citizen. During a special interview in March 2010, she stated that he became a U.S. citizen that month. No documents in the FORM confirm that he is a U.S. citizen. He currently operates a martial arts studio in State C. Her three children are Canadian citizens, but possess U.S. green cards. She indicated that they have not become U.S. citizens because they are lazy and are waiting for her to fill out the paperwork for them. Her youngest son is attending college in State B. Her two eldest sons work with their father in the martial arts studio.⁷

Applicant's mother is a citizen and resident of Afghanistan. She is a 69-year-old housewife. After her family attempted to kill her, Applicant had no contact with her mother from 1982 to 2006. In 2006, Applicant returned to Afghanistan for a two-month vacation and saw her mother about two or three times each week during that vacation. Her cousin, who is a citizen and resident of Afghanistan, takes care of her mother. From 2006 to present, Applicant has had telephonic contact with her cousin approximately once every one or two months to talk about her mother, but she rarely speaks directly to

⁴ Item 4, 5.

⁵ *Id.* Applicant's OPM interview indicated that she moved to Canada in 1997.

⁶ *Id.*

⁷ *Id.*

her mother. Since 2006, she has sent approximately \$100 to \$200 every month or two to her cousin or younger sister for her mother's support. The maximum she has sent for her mother was \$500. She sends the money through an established financial institution. In her e-QIP, she indicated that her father disappeared in 1979, and she does not know whether he is alive. The nature of her father's employment is unknown.⁸

Applicant had a brother and sister who were killed in 1990. Details of their deaths are unknown. Her two living sisters are citizens and residents of Afghanistan. Since her older sister attempted to kill her in 1982, she has had no contact with her. The only information that she receives about her older sister comes from either her cousin or younger sister. In 2004, Applicant traveled to Pakistan for two weeks and met with her younger sister. Her next contact with her younger sister was when she met with her in Afghanistan in 2006. Since 2006, she has telephone contact with her younger sister when she calls her cousin about every month or two. Her two sisters are housewives and have never worked for the Afghan Government. No information is contained in the FORM about her brothers-in-law.⁹

Applicant's mother, younger sister, and cousin do not know that she is working in Afghanistan. If they knew that she was there, they would likely ask her for more money. She indicated that she would not be in danger if they learned that she was there.¹⁰

Applicant's mother-in-law is deceased. Her father-in-law is a citizen and resident of Canada. She does not know what type of job her father-in-law holds. Her sister-in-law is a citizen and resident of the United Kingdom.¹¹

Applicant presented no reference letters or work performance appraisals that would tend to establish good judgment, trustworthiness, or reliability. She has worked in Afghanistan as a translator, but submitted no information regarding the circumstances under which she provided those services. Since she elected to have her case decided without a hearing, I was unable to evaluate in person her credibility, demeanor, or character.¹²

⁸ *Id.*

⁹ *Id.*

¹⁰ Item 5.

¹¹ Items 4, 5.

¹² *Id.*

Afghanistan¹³

Afghanistan has been an independent nation since 1919, after the British relinquished control. A monarchy ruled until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as Mujaheddin, opposed the communist regime. The 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 Mujaheddin were not a party to the negotiations for the Accords and refused to accept them. As a result, a civil war continued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to anarchy and the division of the country among warlords that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin-Laden since the mid-1990s, to Al Qaida generally, and to other terrorist organizations.

After the September 11, 2001, terrorist attacks, the Taliban rejected U.S. demands to expel Bin-Laden and his followers from Afghanistan. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power in November 2001. After a few years of control by an interim government, the first democratic election took place in 2004, and a second round took place in 2009. Despite progress made since the Taliban was disposed, Afghanistan still faces many daunting challenges. Among these challenges are: defeating terrorists and insurgents; recovering from over three decades of civil strife; and rebuilding a shattered physical, economic, and political infrastructure.

Afghanistan's human rights record remains poor. Human rights problems included extrajudicial killings; torture and other abuse; poor prison conditions; widespread official impunity; ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; prolonged pretrial detention; judicial corruption; violations of privacy rights; restrictions on freedom of the press; limits on freedom of assembly; restrictions on freedom of religion, including on religious conversions; limits on freedom of movement; official corruption; violence and societal

¹³ Item 6. The following official U.S. Government documents were used to provide the factual summary on Afghanistan quoted in this decision: U.S. Department of State, *Background Note: Afghanistan*, December 6, 2010 (13 pages); U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Afghanistan*, November 12, 2010 (8 pages); U.S. Department of State, *2010 Human Rights Report: Afghanistan*, April 8, 2011 (25 pages); Director of National Intelligence, *Statement for the Record on the Worldwide Threat Assessment of the U.S. Intelligence Community for the House Permanent Committee on Intelligence*, February 10, 2011 (34 pages); U.S. Department of State, *Country Reports on Terrorism 2009, Chapter 5 – Terrorist Safe Havens and Tactics and Tools for Disrupting or Eliminating Safe Havens*, August 5, 2010 (15 pages); and U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Afghanistan*, March 8, 2011 (3 pages). Footnotes in the quoted text were omitted.

discrimination against women; sexual abuse of children; abuses against minorities; trafficking in persons; abuse of worker rights and child labor. There were numerous reports of the government – or its agents – committing arbitrary or unlawful killings.

Despite some tactical defeats and operational setbacks in 2010, the Taliban-led insurgency continues to threaten U.S. and international goals in Afghanistan. The insurgents retain the capability and intent to conduct high-profile attacks that have had a disproportionate effect on local and international perceptions of security. Although there have been some improvements in the Afghan military and police forces, progress is slow and uneven. Predatory corruption – extortion, land seizures, illegal checkpoints, kidnapping, and drug trafficking that threaten local communities and authority structures – has fueled the insurgency and is detrimental to the Afghan people's perception of their government and to the international community's objectives.

Criminal networks and narcotics cultivation constitute a source of funding for the insurgency in Afghanistan. Streams of Taliban financing from across the border in Pakistan, along with funds gained from narcotics trafficking and kidnapping, have allowed the insurgency to strengthen its military and technical capabilities. Instability along the Pakistan-Afghan frontier also continued to provide Al-Qaida with the opportunity to conduct training, planning, and targeting of Western European and U.S. interests.

The U.S. Department of State warns that the security threat to U.S. citizens in Afghanistan remains critical. Travel in all areas of Afghanistan is unsafe due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of terrorist attacks. In August 2010, a group of doctors, nurses, and medical practitioners, including six U.S. citizens, were shot and killed as they completed a medical aid visit to remote areas. The number of attacks throughout the south and southeastern areas of the country is growing as a result of insurgent and drug-related activity, and no part of Afghanistan is immune from violence. Even the Afghan capital, Kabul, is considered at high risk for militant attacks, including rocket attacks, vehicle-borne IEDs, and suicide bombings.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 to obtain a favorable security decision.

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

(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 could be sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant's mother, two sisters, and cousin are citizens and residents of Afghanistan. Since 2006, she has maintained close contact with her mother, one sister, and cousin in Afghanistan. She regularly provides her mother with money. Applicant's contact with relatives living outside of the United States is sufficient to raise a security concern.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an unstable government or subject to terrorist activity. Insurgency operations are being conducted in Afghanistan against Afghan and U.S. forces. There is also evidence that Afghanistan has a dismal human rights record and has active terrorist groups operating within its borders. This places the burden of persuasion on Applicant to demonstrate that her contacts in Afghanistan do not pose a security risk, and she is not in a position to be forced to choose between loyalty to the U.S. and her connections to family members. With Afghanistan's negative human rights record, its unstable government, and the violent insurgency being conducted within its borders, it is conceivable that Applicant's family members could be vulnerable to coercion. Of note, Applicant's father disappeared in 1979 and her brother and sister were killed in 1990. The circumstances surrounding the disappearance of her father and the deaths of her siblings are unknown. The dangerous circumstances that exist in Afghanistan create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. I find both of the above disqualifying conditions apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8. The following mitigating conditions potentially apply:

(a) the nature of the relationship 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 and 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 interests 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 had no contact with her family from 1982 to 2004. Between 2004 and 2006, she reestablished some of those contacts. Currently, she maintains contact with her mother, younger sister, and cousin. Those contacts are not casual, infrequent, or minimal. She regularly contacts her younger sister and cousin and regularly sends money to her mother. Additionally, her older sister attempted to kill her in 1982. Since then, she has not had any contact with her older sister. Little is known about her older sister. Specifically, it is unknown whether her older sister is still a threat to her or what action her older sister might take if she learned Applicant held a security clearance. Given her close 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) and 8(c) do not apply.

Applicant came to United States in October 2000 and became a U.S. citizen in May 2009. She indicated that her husband became a U.S. citizen in March 2010. Her children are citizens of Canada, but live in the United States. Her financial holdings in the United States consist of cars and bank accounts valued at approximately \$85,000. When considering her contacts and interests in the United States in comparison to those in Afghanistan, I cannot find her sense of loyalty to her family members in Afghanistan is so minimal or her relationships and loyalties in the United States are so deep and long standing that she can be expected to resolve any conflict of interest in favor of U.S. interests. I find AG ¶ 8(b) does not apply.

Applicant has failed to meet her burden of persuasion in establishing the mitigating conditions. In cases of this nature, however, 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.¹⁴

Here, however, Applicant has failed to present any evidence establishing that exception. It is not applicable in this case.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2 were

¹⁴ 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. 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).

addressed under that guideline, but some warrant additional comment. Applicant has been a U.S. citizen for over two-and-a-half years. Since December 2009, she has apparently been supporting the U.S. military in Afghanistan, but the exact nature of that support is unknown. She has close family contacts in Afghanistan that create security concerns. Those security concerns are not mitigated by the evidence that Applicant has presented. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under the Foreign Influence guideline.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

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.

James F. Duffy
Administrative Judge