



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



In the matter of:)	
)	
)	ISCR Case No. 11-00204
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

October 25, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 8, 2010. On June 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B Foreign Influence for the Applicant. 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 (AG), effective within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on August 13, 2011. He answered the SOR in writing, while deployed as an interpreter in Afghanistan, sometime thereafter, and requested a hearing before an Administrative Judge. DOHA received the request on or before October 6, 2011, and I received the case assignment on October 14, 2011. As the Applicant was deployed in Afghanistan until he was scheduled to come home on leave sometime between June 15 and July 15 of 2012, I

granted the Applicant's request for a delay of his hearing until July of 2012. DOHA issued a notice of hearing on April 5, 2012, and I convened the hearing as scheduled on July 11, 2012. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. The Applicant testified on his own behalf and submitted Exhibit (AppX) A1, which was received without objection. The gravamen of this case revolved around the status of the Applicant's father, who was due to arrive in the U.S. in September of 2012. At the request of the Applicant, and with the concurrence of Department Counsel, the hearing was therefore continued until September 5, 2012. The Applicant testified further at this continued hearing. DOHA received the transcripts of the hearing on July 19, 2012 (TR1), and September 13, 2012 (TR2), respectively. I granted the Applicant's request to keep the record open until October 5, 2012, to submit additional matters. On October 1, 2012, he submitted Exhibits A2 and B, which were received without objection. The record closed on October 5, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Afghanistan. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, the Applicant admitted the factual allegations in all the Subparagraphs of the SOR, without explanation.

Guideline B - Foreign Influence

The Applicant was born in Afghanistan in 1987. (TR1 at page 23 line 23 to page 25 line 9, and TR2 at page 9 line 13 to page 10 line 18.) After the rise of the Taliban during a period of civil war, he and his family fled to India in 1990. (*Id.*) In 2003, at the age of 16, his family, minus his father who returned to Afghanistan after the fall of the Taliban, immigrated to the U.S. as refugees. (TR2 at page 11 line 8 to page 12 line 11.) In October of 2010, he became a U.S. citizen. (TR2 at page 15 lines 11~25.) He has been educated in the U.S. since his arrival, and now serves with U.S. forces as an interpreter in Afghanistan. (TR2 at page 16 line 1 to page 19 line 9.)

1.a.~1.d. The Applicant's father is a citizen of Afghanistan, but now resides in the U.S. This is evidenced by his sworn Declaration, by his green card, and by his social security card. (Declaration, and AppXs A2 and B.) He is a retired senior officer from the Afghan Army. (TR2 at page 21 lines 3~11.) He receives no pension from the Afghan government, and is supported solely by his family in the U.S. (TR2 at page 29 line 20 to page 30 line 8.)

The Applicant averred credibly that he cannot be coerced to put the interests of his father above those of the U.S. (TR at page 25 line 8 to page 26 line 25.) His character in this regard is attested to by U.S. Army officers who serve with the Applicant in Afghanistan, by his certificates of appreciation, and by the unit patches he has been awarded in thanks for his service. (AppX A1.)

I also take administrative notice of the following facts. Afghanistan has been an independent nation since 1919. However, in 1989, a civil war ensued with the departure of the Soviet Union's forces, who had occupied Afghanistan for ten years. In the mid-1990s, the Taliban rose to power. However, the Taliban were forced out of power in 2001, by U.S. forces and a coalition partnership. After a few years of control by an interim government, democratic elections took place in 2004 and again in 2009. However, despite some tactical defeats and operational setbacks in 2010, the Taliban have continued to threaten U.S. and international goals in Afghanistan.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 over-arching 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 as to 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 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

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraphs 7(a) and 7(b) are arguably applicable: 7(a) “*contacts with a foreign family member . . . 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 7(b) “*connections to a foreign person . . . 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 . . . by providing that information.*” The Applicant’s father is a citizen of Afghanistan, and was a senior officer there. These are clearly countered, however, by the first and second mitigating conditions, as 8(a) “*the nature of the relationships with foreign persons, . . . 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 . . . and the interests of the U.S.*”; and 8(b) “*there is no conflict of interest [as] 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.*” The Applicant has lived in the U.S. since the age of 16, is a U.S. citizen, serves the U.S. military in Afghanistan, and his father is now a permanent resident of the U.S. Furthermore, I find the Applicant cannot be coerced by the government of Afghanistan or any other government vis-a-vis his father, who now resides in the U.S.

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. 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 Administrative Judge should also consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The record shows that the Applicant understands his responsibility to the U.S., and serves this country in Afghanistan. Furthermore, he has the unqualified support of those who he supports as an interpreter in the field of combat. (AppX A1).

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. 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 security concerns arising from his alleged Foreign Influence.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge