



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



In the matter of:)	
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)	ISCR Case No. 11-00556
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Lance Gallardo, Esquire

June 7, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On June 13, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for 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 after September 1, 2006.

On July 23, 2011, Applicant replied to the SOR (RSOR) in writing, and he requested a decision based on a hearing before an Administrative Judge. I received the case assignment on January 20, 2012. DOHA issued a first notice of hearing on January 25, 2012, and the hearing was scheduled for February 14, 2012. At the request of Applicant's counsel, the hearing was continued. A second notice of hearing was issued on April 20, 2012, and the hearing was conducted as scheduled on May 1, 2012. The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through D, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on

May 11, 2012. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts relating to the Republic of Afghanistan (Afghanistan) and the Islamic Republic of Pakistan (Pakistan). The request and the attached documents were admitted into evidence as Exhibits 4 and 5. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR, Applicant admitted all of the SOR allegations, 1.a. through 1. h. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 53 years old. He was born in Afghanistan in 1958 and moved to the United States in 1982. Applicant became a naturalized United States citizen in 1989. He has been married since 1993, and he has three daughters. His wife was also born in Afghanistan, and she became a United States citizen in 1999 or 2000. She is a housewife. His three children are United States born citizens. Applicant's father is deceased, and his mother is a resident of the United States and a naturalized United States citizen. Applicant also has two grandsons who live with Applicant and his daughter. Additionally, Applicant's sister-in-law, her husband, and several cousins also live in the United States. (Tr at 111-112.)

Applicant owns the home in which he and his family live. His home was recently appraised at \$340,000. Applicant strongly expressed his feelings of loyalty and affection for the United States. (Tr at 100-107.)

Applicant is solely a United States citizen and only has a United States passport. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with employment in the defense sector.

(Guideline B - Foreign Influence)

The SOR lists eight allegations regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. As stated above, Applicant admitted in his RSOR all of the allegations listed:

1.a. Applicant has a brother who is a citizen and resident of Germany. Applicant testified that his brother has lived in Germany since 1982. Applicant last spoke to his

brother in 1999 or 2000, and he does not have a good relationship with this brother. (Tr at 51-53.)

1.b. Applicant has a brother who is a citizen of Afghanistan and resident of Germany. Applicant testified that he last spoke to this brother in the same 1999 to 2000 time frame, and he also does not have a good relationship with this brother. (Tr at 53-54.)

1.c. Applicant has a sister who is a citizen and resident of Pakistan. Applicant testified that his sister is a housewife. (Tr at 110.) Her husband, who is in his late 70s, did work for the Government of Pakistan in the 1980s. (Tr at 41-48.)

1.d. Applicant has two sisters who are citizens and residents of Germany. Applicant testified that they both emigrated to Germany from Pakistan in the early 1980's. He believes that they both have become naturalized German citizens. He last saw his sisters in the 1980s, and he stated that he does not have a close relationship with either of them. He has not spoken to one of the sisters since 1999, and the other sister called him for a brief conversation in 2011, but before that he had not spoken to her since 1999. (Tr at 55-60.)

1.e. Applicant has a father-in-law who is a citizen of Afghanistan and resident of the United States. He served in the Afghanistan Government. He has lived in the United States since 2007, and he lives with Applicant's sister-in-law. He has not done any work for the Afghan Government since he moved to the United States. Applicant does not have a close relationship with his father-in-law. He estimated that his last conversation with his father-in-law was in 2009 or 2010. (Tr at 60-69.)

1.f. Applicant has an uncle who is a citizen and resident of Afghanistan. Applicant testified that this individual is the husband of his aunt. He does not work for the Afghan Government. He is wealthy and owns real estate and orchards. Applicant estimated his age to be in the late 70s. Applicant characterized him as very pro-American, and Applicant had his last conversation with his uncle in 2009 or 2010. He stated that he is not very close to this person. (Tr at 70-74.)

1.g. Applicant has a cousin who is a citizen and resident of Pakistan. Applicant testified that this person is actually his nephew, not his cousin, and he is the son of Applicant's oldest sister. Applicant estimated his age to be late 30s. Applicant described his relationship with his nephew as "pretty good." Applicant's sister, who is Applicant's nephew's mother, told Applicant that her son works for the United Nations. He had previously worked for the Government of Pakistan. Applicant did not know what his nephew had done in his previous position or what he is doing in his current position. Applicant testified that he talks to his nephew from one to four times a year. (Tr at 75-81.)

1.h. Applicant partially inherited from his father some property in Afghanistan. Applicant testified that this property is owned by many relatives. He does not receive any income from this property, nor does he have any legal rights to sell or encumber the

property. Currently relatives of Applicant are living in the house. Applicant does not know the value of the property, and he does not believe that he would receive any proceeds if it was sold. (Tr at 81-87.)

Mitigation

Applicant submitted two character letters from individuals who know Applicant in his current employment position. (Exhibits A and B.) A United States Air Force Lieutenant Colonel described Applicant as someone who, “has a positive attitude, strong work ethic and he is a leader among his peers; he possesses an incredible ability to rally his teammates to achieve tough challenges.” Exhibit C is a Certificate of Appreciation that Applicant received for his exceptional work for a United States Task Force.

Current Status of Afghanistan

Afghanistan has been an independent nation since August 1919, after the British relinquished control. A monarchy ruled from 1919 until a military coup in 1973. Following a Soviet supported coup in 1978 a Marxist government emerged. In 1979, Soviet forces invaded and occupied Afghanistan, and the Soviets withdrew in 1989. After the withdrawal a civil war continued, and in the mid 1990s the Taliban rose to power. The Taliban committed massive human rights violations and provided sanctuary to Osama Bin-Laden and al Quaida. After the September 11, 2001 terrorist attacks the United States forces and a coalition commenced military operations in October 2001, and forced the Taliban out of power and a new democratic government was installed in 2004.

Afghanistan’s human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly frequent, sophisticated, and destabilizing. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

Current Status of Pakistan

Pakistan has extensive networks operating within its borders. Members of the Taliban, al-Qu’ada, extremists, foreign insurgents, and Pakistani militants have re-exerted their holds over areas in Pakistan. Al-Qu’ada leadership in Pakistan supported militants in conducting attacks in Afghanistan and provided funding, training, and personnel to facilitate terrorist operations.

Overall Pakistan has intensified counterinsurgency efforts, but its record in dealing with militants has been mixed. The U.S. Department of State has concluded that, despite efforts by Pakistani security forces, al-Qu’aida terrorists, Afghan militants, foreign insurgents and Pakistani militants continue to find safe havens in portions of Pakistan, and have operated in those areas to organize, train, and plan attacks against the United States and its allies in Afghanistan, India, and Europe.

The human rights situation in Pakistan remains poor. Major problems include extrajudicial killings, torture and disappearances. Additional problems include poor prison conditions, arbitrary arrest, widespread Government corruption, rape, and widespread trafficking in persons.

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

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. Those that could be applicable in this case include the following: 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’s family, who are citizens and residents of Afghanistan and Pakistan, makes AG ¶ 7(a) a concern to the Government. I find that AG ¶ 7(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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information,” is also applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 8(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,” is applicable to this Applicant and controlling for the following reasons:

Applicant came to the United States in 1982, and became a naturalized United States citizen in 1989. Applicant’s wife, his three daughters, his mother, and his two grandsons are all residents and citizens of the United States. Applicant’s sister-in-law and cousins also reside in the United States. Applicant purchased a home in the United States, and he has no property outside of the United States. None of his relatives in Afghanistan or Pakistan now work for their respective Governments, and his contact

with his brothers and sisters is extremely infrequent. Finally, Applicant testified rather passionately and credibly that he is devoted to the United States. Based on all of these reasons, I conclude Guideline B for Applicant.

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. Based on all of the reasons cited above as to why mitigating condition AG ¶ 8(b) applies, and the very positive character letters submitted by Applicant, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

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

Subparagraphs 1.a through 1.h.:

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

Martin H. Mogul
Administrative Judge