



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



In the matter of:)	
)	
)	ISCR Case No. 11-06774
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

January 31, 2012

Decision

LYNCH, Noreen A., Administrative Judge:

On August 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application for a security clearance, citing 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 (AG) implemented in September 2006.

Applicant received the SOR on August 15, 2011, and requested a hearing before an administrative judge. DOHA assigned the case to me on December 8, 2011. I convened the hearing as scheduled on January 6, 2012. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted three documents (AE A-C), which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 12, 2012. Eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Afghanistan. (Tr. 15) The request and the attached documents are included in the record as Hearing Exhibit I. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations in ¶ 1.a. Her admissions are incorporated in my findings of fact. I make the following findings:

Applicant is a 48-year-old woman who was born in Afghanistan. She came to the United States in 1979 with her family. She graduated from an American high school in 1982. Applicant became a naturalized American citizen in 1987. She married in 1984. Her husband was also born in Afghanistan, but he is a naturalized U.S. citizen. (AE A) She and her husband have two children from their marriage. (Tr. 40)

Applicant has worked as a linguist with a mission essential company since January 2010. She has a category 1 interim level security clearance. Applicant has lived and worked as a linguist on U.S. Army installations in Afghanistan. She described the many dangerous missions in Afghanistan that she has survived. Her reconstruction team is involved with building roads, bridges, and schools. She has seen and heard bullets and witnessed a gunner get shot in the head. (Tr. 45) She has seen the flags of the Taliban.

All of Applicant's immediate family resides in the United States, including her parents, siblings and in-laws. They are naturalized U.S. citizens. (Tr. 57) Her father is a Category 3 linguist. She has no other contacts in Afghanistan. (Tr. 71)

Applicant's uncle is a prominent politician in Afghanistan. He serves as an advisor to President Karzai. Applicant has not seen her uncle in 12 years. (GE 2) She attended a funeral in the United States for her other uncle. She testified that she has no interest in his personal or professional life. (Tr. 11) She has never seen him in Afghanistan during her work. Applicant was candid in answering questions about her uncle. He is her mother's brother. (Tr. 56) She is not personally aware of his current position. She believes he may know that she works in Afghanistan. (Tr. 63) He is married to an American citizen. (Tr. 52) She knows that her uncle has a residence in the U.S. and spends some time in the United States when he is not in Afghanistan. (AE A) He was educated in the United States and has children in the United States. Thus, he has ties to the United States as well as Afghanistan.

Applicant has no property in Afghanistan. She has no desire to permanently return to the country. Applicant owns a home in the United States. (AE C) She has substantial assets in the United States.

At the hearing, Applicant was passionate about her feelings for the United States. She related that she is a proud and honest citizen of the United States and living a respected life with her husband and two college children. She worked for a bank for almost 27 years prior to working as a linguist. She was noted as employee of the region for seven years. (Tr. 35)

Applicant 's linguistic and cultural advisory skills have won her much praise during her almost two years working with the U.S. military. Applicant asserted her pride of U.S. citizenship and love for her work with the Army. She went on missions with the U.S. Army. She has willingly put herself in danger every day for almost two years in order to help the United States. Applicant emphasized that she would never betray the United States. She wants to "give back" to the United States."

There is no evidence in the record that Applicant breached any security policies or procedures while in Afghanistan. She had no contact with any family members while in Afghanistan. She has letters of appreciation for her work in Afghanistan. (AE B)

A commanding officer who has worked with Applicant in Afghanistan for the past seven months recommends Applicant for continued service. During that time, he writes that Applicant "is the most proficient and capable linguist on the team." She has earned his complete trust and confidence. He does not go anywhere without Applicant. He noted that she connects with Afghan women and has made great strides in educating women on economic and educational opportunities. She works well with high level individuals, both American and Afghan. Finally, he describes her as a "true American." She is a devoted mother and wife. She is conscientious and thorough in every task. (AE B)

A military medical director described Applicant's contributions to mission accomplishment by stating:

Applicant served as the translator for our very busy service (medical and mental health services to a broad range of individuals in a forward deployed combat zone). Her talents as an interpreter are unparalleled. She is highly sought after by all medical and mental health providers. She is interpersonally warm and engaging, and demonstrates a unique ability to put others at ease, effortlessly bringing calm to tense situation. She is the perfect employee who is dependable, reliable and responsible. Her exceptional combination of personal and professional skills place her in high demand throughout the mission. (AE B)

Applicant presented a 2011 recommendation from a team of military personnel with whom she has worked in Afghanistan. The colonel recognizes Applicant for her contributions to fighting the War on Terror. According to the colonel, Applicant's "dedication to the company's mission, cultural expertise, and insightful understanding of a medical exchange between a medical officer and a detainee patient goes beyond fluency of language."

She also plays a special role to the female medical officers in mitigating cultural barriers that would otherwise impede obtaining an accurate exam in the gender antagonistic environment that can be found in the detainee population. Her ability to translate the language and the culture of the Pashto detainee has been an important factor in the efficient medical processing of the ever-increasing number of detainee exams as well as keying into subtle patient clues that have offered great assistance in the urgent evaluation of detainee injury and illnesses.

Applicant has been with her current employer since January 2010. Applicant's senior linguistic coordinating officer commended Applicant on her performance. The major has heard nothing but good things about Applicant. There has never been an issue in Applicant's handling of sensitive information. She consistently exercises patience, perseverance, and professionalism in all assigned tasks. She is dependable, exercises good judgment, and has a mature outlook concerning her endeavors. She is a team player and is committed to excellence. She is well respected by her peers and superiors alike. (AE B) Applicant presented three awards and certificates of appreciation for her service in Afghanistan in 2010-2011.(AE C)

I take administrative notice of the following facts about Afghanistan, including the fact that Afghanistan has been an independent nation since August 19, 1919, after the British relinquished control. A monarch ruled from 1919 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 Pakistan, Afghanistan, 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, civil war continued after the Soviet withdrawal. In the mid 1990s, the Taliban rose to power largely due to the anarchy and warlordism 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, Al Qa'ida, and other terrorist organizations.

After the September 11, 2001 terrorist attacks, demands to expel Bin Laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001. A new democratic government took power in 2004. Despite progress made since the Taliban was deposed, 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.

The Taliban, Al-Qa'ida, other insurgent groups, and anti-Coalition organizations continue to operate in Afghanistan, resulting in numerous attacks and deaths. Insurgents have targeted non-governmental organizations (NGOs), Afghan journalists, government workers, and UN workers. Instability along the Pakistan-Afghan frontier continued to provide al-Qa'ida with leadership mobility and the ability to conduct training and operational planning, targeting Western Europe and U.S. interests in particular. Kabul, in particular, has seen a rise in militant attacks, including rocket attacks, vehicle borne improvised explosive devices (IEDs), and suicide bombings.

At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. 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.

The United States supports the efforts of the Afghan Government to establish a vibrant civil society, one that emphasizes democratic principles through a rule of law and creates accountable and transparent forms of government. The United States and its international partners remain committed to helping Afghans realize their vision for a country that is stable, democratic, and economically successful, and to an Afghan Government committed to the protection of women's rights, human rights, and religious tolerance.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon an applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of an applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination of the loyalty of an applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify an applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to an applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B (Foreign Influence)

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b).

Applicant’s uncle is citizen and resident of Afghanistan, and is a high profile member of the Afghan government. Applicant maintains no contact with him. She last saw him approximately 12 years ago at a funeral in the United States. He has a residence in the United States. He may know that Applicant is a linguist working for the U.S. military in Afghanistan. Applicant’s uncle is married to a U.S. citizen. Applicant’s connections to her uncle is practically nonexistent. However, he could create a potential conflict of interest between her security obligations and her desire to help him, only in a situation wherein he was taken hostage or otherwise threatened with harm if Applicant did not cooperate. Applicant has not maintained any regular contact with him; however, under either disqualifying condition, security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to her family member in Afghanistan. Based on this evidence, AG ¶¶ 7(a) and (b) are raised.

Since the Government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the United States, 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 authoritarian government, a family

member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, 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.”) applies.

Applicant has been in the United States since 1979, and she has been a U.S. citizen since 1987. Her husband is a U.S. citizen and her two children are U.S. citizens. She has substantial interests in the United States. She has no desire to return to Afghanistan to live. Applicant’s immediate family members are citizens and residents of the United States.

Applicant does not maintain contact with her uncle in Afghanistan. She saw him twelve years ago at a funeral in the United States. He was educated in the United States and has an American wife and children.

Applicant’s work as an interpreter and cultural advisor supported the U.S. military mission in Afghanistan, not the work of those who seek to destroy the growing democracy in Afghanistan. The new Afghanistan government relies upon the United States for support, both financially and militarily, as it moves forward with a new form of government. While Afghanistan’s human rights record under the Taliban was dismal and serious problems continue, its human rights record is slowly improving. Since working as an interpreter with the Army for two years, neither Applicant nor her family has been pressured by any organization to provide any type of information, classified or otherwise, about the United States.

In every case where a family member lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation, pressure, or coercion is not substantial. Applicant has significant ties to the United States and few ties to Afghanistan. Applicant has no financial or property interests in Afghanistan. She wants to help the United States in its role in the redevelopment of Afghanistan. Applicant’s ties with the United States are much stronger than her ties with Afghanistan. The Army holds her work as a translator and cultural advisor in high regard. She provided more than language interpretation skills. She explained nuances and practices that greatly assisted the military in accomplishing its mission. During her time in

Afghanistan, she worked hard to help the Army. She developed a high level of trust with the Army and the Afghan locals.

Applicant spoke about her undivided loyalty to the United States. Based on her relationship and loyalty to the United States, she can be expected to resolve any conflict of interest in favor of the U.S. interest. She has lived in the United States since 1979, and did not return to Afghanistan until 2010. In 2010, she returned to Afghanistan at the behest of the United States. She owns property in the United States. She worked in the United States for many years. She endured dangerous conditions in Afghanistan on behalf of the U.S. Army. She has no security violations. She credibly testified that she would report someone to the U. S. Government if asked about classified information. I find Applicant has such deep and longstanding relationships and loyalties in America that she can be expected to resolve any potential conflict of interest in favor of the United States. She has established application of AG ¶ 8(b).

Whole-Person Concept

Under the whole-person concept, an 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. An 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 Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his or her ties to a foreign country; his or her social ties within the U.S.; and, many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Certain circumstances weigh against Applicant in the whole-person analysis. First, Applicant has one relative, her uncle, who lives in Afghanistan. Terrorists or agents of the Tal'iban could attempt to use Applicant's uncle to obtain information. These connections raise the possibility of foreign influence.

However, the connection is minimal. Applicant's immediate family reside in the United States and are U.S. citizens.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there. Afghanistan is a dangerous place because of the violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the Afghan Government, the interests of the United States, U.S. Armed Forces, and those who cooperate with and assist the United States. The United States and Afghanistan are allies in the war on terrorism. The United States is committed to the establishment of a free and independent Afghan Government. Afghanistan and the United States have close relationships in diplomacy and trade.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant left Afghanistan many years ago with her family. She has been a naturalized U.S. citizen for many years. She is married to a U.S. citizen. Her children are U.S. citizens. Her immediate family is in the United States. She is a mature person, who has lived in the United States, and created a life in the United States. She has a strong sense of patriotism toward the United States, as witnessed by her dedication and work with the U.S. Army. There is no evidence that she has ever taken any action that could cause potential harm to the United States. Her military supervisors, who work with her daily in a war zone, praised her work in the cause of freedom in Afghanistan. She has no desire to live in Afghanistan. She has established her life in the United States. She now owns property in the U.S.

Applicant is a loyal U.S. citizen who has worked under dangerous conditions in support of our national defense. She credibly testified that she would report any attempt to use her family members to coerce her to reveal classified information. The Appeal Board has held that "generally, an applicant's statements, by themselves, as to what he [or she] would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."¹

She served the United States in a dangerous, high-risk situation and her character references establish her significant contributions to U.S. national security. While contribution to a company is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case. No. 05-03846 at 6 (App. Bd. Nov. 14, 2006):

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by applicant's more immediate disqualifying conduct or circumstances. See, e.g. ISCR Case. No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No 02-10113 at 4 (App.

¹ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

Bd. Mr. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). 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 made a significant contribution to the nation's security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report to a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence. The complicated state of affairs in Afghanistan places a significant burden on Applicant to demonstrate that her foreign family member does not pose an unacceptable security risk. She has met that burden.

I conclude that the whole-person analysis weighs heavily toward approval of her security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶ 8 do not apply, I conclude the whole-person analysis standing alone is sufficient to support approval of a security clearance in this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Foreign Influence: FOR APPLICANT

Subparagraph 1.a: 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.

Noreen A. Lynch
Administrative Judge