



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



In the matter of:)
)
) ISCR Case No. 11-12063
)
)
Applicant for Security Clearance)

Appearances

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

06/21/2013

Decision

WHITE, David M., Administrative Judge:

Applicant was born and raised in Afghanistan. He fled to Pakistan in 2000, then became a U.S. resident in 2002 after being granted refugee status. His mother, eldest son, three brothers and their wives, parents-in-law, and brother-in-law are Afghan citizens residing in Pakistan. Two sisters and their husbands are resident citizens of Afghanistan. He failed to mitigate resulting security concerns. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on March 6, 2011.¹ On November 21, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign

¹Item 4.

Influence).² 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on December 21, 2012, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on March 11, 2013. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant received his copy of the FORM on April 4, 2013. On April 6, 2013, he submitted the additional evidence (AE A) that is contained in the blue folder in the record, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. Department Counsel did not object to the admissibility of AE A, which is hereby admitted into evidence. I received the case assignment on May 28, 2013.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor, where he has worked as an interpreter assisting U.S. forces in Afghanistan for about two years. He has never held a security clearance, other than a very brief interim clearance in 2009 in connection with other potential employment, and has no military service. He completed high school in Afghanistan and attended some English classes and vocational training at U.S. community colleges. He is married, and has three children ages 15, 8, and 5.⁵ In his response to the SOR, Applicant admitted all of the factual allegations as set forth in SOR ¶¶ 1.a through 1.j.⁶ Applicant's admissions, including those made in his response to DoD Interrogatories and Counterintelligence Questionnaires,⁷ are incorporated in the following findings.

²Item 1.

³Item 2.

⁴The Government submitted 14 Items in support of the SOR allegations.

⁵Item 4; Item 12.

⁶Item 2.

⁷Items 7 through 12.

Applicant was born and raised in eastern Afghanistan. His father, who passed away in 1994, was a farmer. His mother did not work outside their home. Applicant fled to Pakistan, in April 2000, as a refugee from the Taliban, who had been repressing and killing members of his minority sect. His elder brother had joined the military wing of a party formed to protect their sect, leaving Applicant in danger as the male head of their household. Applicant, using forged travel documents, went from Pakistan to Thailand, Laos, and Singapore while in transit to Indonesia, where he was arrested and jailed in June 2000. He had intended to continue traveling to Australia from Indonesia, along a route followed by other Afghans seeking to work there illegally. In November 2000, the United Nations granted Applicant refugee status, and directed him to remain in Indonesia until another country would accept him as such. The United States granted him a permanent resident/refugee visa on which he entered this country in November 2002. He became a naturalized U.S. citizen in April 2009.⁸

Applicant and his wife married in Afghanistan in 1996. Their eldest son was born there in 1998. When Applicant left Afghanistan his wife and son did not travel with him because the Taliban was only concerned with adult males and he was not concerned about their safety. At some later time, Applicant's mother, wife, and son moved to a city in western Pakistan due to their own safety concerns, presumably arising from the increasing instability, fighting, and lack of security after the events of late 2001.⁹

Applicant visited his family in Pakistan from July to December 2004. His second son was born in Pakistan in April 2005, with Afghani citizenship due to the citizenship of his parents. The U.S. Embassy in Pakistan issued Applicant's wife a refugee visa in September 2006, and she traveled to the United States with their younger son. Their elder son remained in Pakistan to help care for Applicant's mother, and because Applicant lacked the funds needed to pay for his travel. In October 2011, Applicant's wife became a naturalized U.S. citizen. In July 2010, Applicant's second son was granted permanent resident status. Applicant told an investigator from the Office of Personnel Management (OPM) that this son became a naturalized U.S. citizen in March 2011, but could provide no further information or documentation besides his permanent residence card. Applicant's wife gave birth to their daughter in the United States in November 2007.¹⁰

In 2004 due to a drought in Afghanistan, Applicant's elder brother, his two younger brothers, and their three wives, all of whom hold Afghani citizenship, moved to the home occupied by his mother and eldest son in western Pakistan. They still live there. The brothers all operated a local grocery shop, which provides enough income to support their families as well as Applicant's son and mother when he runs short of funds. Recently, Applicant's youngest brother opened a tailor shop. Applicant, when able, sends his mother regular monthly payments of several hundred dollars through

⁸Item 4; Item 5; Item 10; Item 12.

⁹Item 4; Item 12.

¹⁰Item 4; Item 10; Item 12.

Western Union because she and his son have no other income. Applicant communicates with his family members in Pakistan several times each month. Their family relationship is close and strong. Applicant hopes to sponsor many of his family members to enter the United States in the future.¹¹

Applicant's two sisters are resident citizens of Afghanistan, married to farmers who are also resident citizens there. During 2010, one of his sisters had a medical problem and he sent her between \$1,000 and \$1,400 to help pay for necessary treatment. He last spoke to them and their husbands in 2010, at which time he had not spoken to them since 1999. However, his willingness to pay for her medical treatment demonstrates his dedication to family obligations toward his sisters. His wife's parents and brother are citizens of Afghanistan who, for unspecified reasons, moved to western Pakistan in 2006 and currently reside in the same home with Applicant's extended family. None of Applicant's extended family members have any connection to, or employment history with, the governments of Afghanistan or Pakistan. Applicant stated that, "I understand that it is going to be a risk for my relatives, that is why I did not say to anybody that I am working for coalition forces. No one knows where or when I am working. I understand that this is a secret and I have to keep as a secret."¹²

Applicant did not submit any evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. There is no evidence or allegation of any security violation while he has been serving with U.S. forces in Afghanistan during the past two years. However, he provided no information from which to conclude that his service involved either dangerous, high-risk circumstances, or a significant contribution to national security that could give greater probative weight to a history of compliance with security procedures and regulations.¹³ He submitted no character references describing his judgment, morality, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

I took administrative notice of the facts set forth in Items 13 and 14 concerning the Islamic Republics of Afghanistan and Pakistan, which are incorporated herein by reference. Of particular significance are the poor human rights situation; and the active and hostile presence of Al Qaida, the Taliban, and other militant extremist groups that generate instability and openly attack police and military forces of the respective governments, as well as the local populace and U.S. persons and interests.

¹¹Item 2; Item 4; Item 8; Item 10; Item 12; AE A.

¹²Item 2; Item 4; Item 8; Item 10; Item 12; AE A.

¹³ISCR Case No. 12-09326 at 2 (App. Bd. Jun 18, 2013); ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

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. Department Counsel persuasively argued that substantial evidence in this case established two of them:

(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.

After considering the SOR allegations and the record evidence, I find that an additional DC under AG ¶ 7 is raised in this case:

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Both Afghanistan and Pakistan have significant internal anti-western terrorism threats that operate openly contrary to U.S. interests. According to Applicant, they also have militant factions that operate against his minority sect. Accordingly, his close family connections in those countries have more potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (d), than would similar connections in many other countries.

Applicant's two sisters and their husbands, with whom he maintains very sporadic communication and minimal familial relationships, are resident citizens of Afghanistan. Applicant's other extended family members, except his wife and two younger children, live in an apparently temporary residence in Pakistan, without significant evidence to indicate whether they will remain there, return to Afghanistan, or seek permission to emigrate to the United States. Applicant shares living quarters with his wife, whose parents are Afghan citizens and also reside with Applicant's mother, son, and brothers, in an area of Pakistan identified in HE II as particularly susceptible to militant, insurgent, and terrorist presence and activity. He has an entirely legitimate, serious interest in the welfare of her family members in Pakistan, as well as his own family there, creating the potential for conflict of interest under AG ¶ 7(b).

These facts meet the Government's burden of production by raising all three of the aforementioned disqualifying conditions. Applicant's contacts, relationships, and connections with Afghanistan and Pakistan through his relatives who are citizens and residing there shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), and (d) security concerns are:

(a) 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.;

(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; 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.

Considered in light of the substantial anti-western terrorism threat and impending departure of most NATO military forces from the region, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the U.S. due to his family ties there. He has close relationships, particularly with family members now living in Pakistan, and a strong interest in protecting his mother, son, brothers, sisters, and his wife's family, who are residents or citizens of those two countries. His communication and contact with his Afghani and Pakistan-resident family members since he came to

the U.S. are neither casual nor infrequent. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and (c).

The evidence also fails to establish significant mitigation under AG ¶ 8(b). Applicant provided no evidence of longstanding relationships or loyalty to the United States. In fact, he only came here when no other country accepted him as a United Nations refugee during the two years after he was arrested in Indonesia while trying to illegally emigrate to Australia. He did not establish that he has endured life-threatening conditions or made a significant contribution to the national security, which would sufficiently demonstrate deep or longstanding U.S. relationships or loyalties under Appeal Board precedent.

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 relevant 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 pertinent facts and circumstances surrounding this case. Applicant's conduct is not in question here. He is a mature and experienced individual, who has provided service to U.S. military forces deployed in his native Afghanistan. However, the inherent potential for pressure, coercion, exploitation, or duress from the presence of Applicant's family members in Afghanistan and Pakistan remains unmitigated. Placing Applicant in a position wherein it is foreseeable that he could be forced to choose between the security interests of the United States and the interests of his or his wife's family is the harm to be avoided under Appeal Board precedent. He failed to show that such potential is diminished to any reasonable extent. His service in support of coalition military units in Afghanistan is commendable, but does not justify placing him or his relatives at risk of exploitation due to his access to classified information, particularly since he left there as a refugee in fear for his safety from those who he thought saw him as a threat to their interests. He did not demonstrate sufficient connections to the United

States to outweigh the heightened risks and potential conflicts under these circumstances.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from foreign influence considerations.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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.

DAVID M. WHITE
Administrative Judge