



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



In the matter of:)	
)	
XXXXXXXX, Xxxxx Xxxxx)	ISCR Case No. 11-12434
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

06/29/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant's clearance.

On 7 March 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence, and Guideline E, Personal Conduct.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 18 April 2012, and I convened a hearing 15 May 2012. DOHA received the transcript 23 May 2012.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant exhibits A-G.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted SOR allegations 1.b, 1.c, 1.f, and 2.a. He denied the remaining SOR allegations. He is a 47-year-old linguist employed by defense contractors since August 2010. He seeks reinstatement of the interim security clearance he obtained in July 2010.

Applicant was born in Afghanistan in June 1964. In 1981, Applicant's family fled Afghanistan in the wake of the Soviet invasion. Applicant's parents were on vacation in India when a cousin convinced them not to return to Afghanistan. Applicant did not have an Afghan passport, and he could not obtain one because he had not completed his compulsory military service, so he and several unrelated friends walked over the mountains into Pakistan. In Pakistan, he bought a fake Afghan passport and traveled to India to meet up with his parents. In India, Applicant's family obtained political asylum to immigrate to the U.S. When Applicant arrived in the U.S., immigration officials confiscated his fake Afghan passport. He was naturalized as a U.S. citizen in June 1988. He obtained his most recent U.S. passport in January 2005. Applicant obtained an undergraduate degree in electrical engineering technology from a U.S. university in July 1987.

Applicant's wife, who is also a native-born Afghan, immigrated to the U.S. in 1984, when she was 12 years old. They married in September 1990. She is a legal permanent resident (LPR) of the U.S., and is eligible for her U.S. citizenship. However, she has only recently begun the application process (AE C) because she and Applicant could not afford the application fees. They have two sons born in the U.S. in September 1994 and June 2009. Applicant owns his home in the U.S. and all his financial interests are here.

Applicant's mother-in-law is dead. His father-in-law abandoned his family in the U.S. and returned to Afghanistan in 2002. He married another woman and began another family before his wife in the U.S. died. He was not divorced. Applicant has had little or no contact with his father-in-law since he left the U.S. in 2002. Applicant's wife is completely estranged from her father. Neither Applicant nor his wife have any immediate family in Afghanistan, although they have extended family there. Applicant traveled to Afghanistan January-February 2005 and March-April 2007 to visit family.

From mid-2006 to the end of 2009, Applicant worked as a web-designer and videographer for a company he and his wife set up in his wife's name to do free-lance work on a contract basis. His company was hired to videotape press conferences, ceremonies, and interviews involving notable Afghans for another company to broadcast these events in Afghanistan. Applicant videotaped events at the White House, the Pentagon, Congress, the Army Academy, the Afghan and Greek embassies, as well hotels where the dignitaries were staying (AE A). Applicant only videotaped the events; the company that hired him controlled any editorial content. As a result of some of these contacts, Applicant receives occasional email newsletters from the Afghan embassy.

Some of the companies Applicant produced websites for also hired him to produce commercials for the products and services provided by the companies. The companies themselves are—like Applicant's company—U.S. companies owned by Afghan-Americans. One of the companies markets telephone calling cards to call Afghanistan and other countries in the region. None of the companies is conducting business in Afghanistan.

Applicant has an Afghan-American friend who returned to Afghanistan in 2005 to pursue a career as a popsinger. Applicant traveled to Afghanistan in October-November 2005 to shoot some music videos for his friend. He also traveled to Afghanistan in August-September 2006 and October 2006 to shoot video of the improved conditions in Afghanistan. He markets the video on his website in the U.S. to show his impressions of progress in Afghan society.

Afghanistan is an Islamic Republic and emerging democracy. With the support of the U.S. and other nations, the new government endeavors to build a new system of government and to rebuild the country's infrastructure. The Army and police force are well trained. The government continues to face significant challenges from insurgents and terrorist organizations supported by the ousted Taliban as well as Al Qa'ida, but actively seeks to eliminate both with the assistance of the U.S. and NATO. The new government is also working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community, has signed a "Good Neighbor" declaration with six nations bordering it, and promotes regional cooperation. The U.S. supports the emergence of a broad-based government in Afghanistan. Afghanistan continues to seek U.S. support as it moves forward towards democracy and stability. It is not known to be an active collector of intelligence information.

The SOR also alleges that Applicant falsified his September 2010 clearance application by failing to disclose a September 2008 federal income tax lien (SOR 2.a) and a 180-day delinquent account (SOR 2.b). The record reflects that when Applicant completed his application inputs in August 2010, he was unaware of the allegedly-delinquent account, and had demonstrated to the Internal Revenue Services' (IRS) satisfaction that the lien had been erroneously filed. Applicant's September 2010 credit report (GE 4) reflected that the allegedly-delinquent account was first reported in August 2010. The credit report also reflected that Applicant's IRS issue had been resolved in March 2009. Finally, when Applicant later applied for upgraded access, he noted the earlier missing information on his application (AE E).

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself,

conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline B (Foreign Influence) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.³

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁴ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁵ In addition, security concerns 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

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴AG ¶ 6.

⁵AG ¶ 7(a).

desire to help a foreign person, group, or country by providing that information.⁶ Finally, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.⁷

In this case, the Government failed to establish a case for disqualification under Guideline B. Considering first the country involved, on balance Afghanistan and the U.S. enjoy good foreign relations. It has not been demonstrated that the Afghan government is actively engaged in the collection of U.S. intelligence which would make Applicant or his family likely targets for coercion, duress, or influence. The government's evidence explains the links to terrorism that are on-going in Afghanistan and the way that those terrorist organizations operate, the increase in terrorism, and the increase in membership in terrorist groups. Several of the groups that are frequently in the news, for example the Taliban and Al Qa'ida, operate in Afghanistan and practice terrorist acts against Afghan and U.S. forces as well as indiscriminate violence in order to draw attention to themselves and increase their membership and their power. There is no indication they use terrorism to gain access to U.S. information.

Considering Applicant's circumstances, the Government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited contacts in Afghanistan. None of Applicant's Afghan contacts have any direct connection to the Afghan government, and there is nothing in his connection to them to raise a concern over protecting classified information. The information technology (IT) business conducted by Applicant and his wife from 2006-2009 was conducted only in the U.S. by their U.S. company. The companies they worked for were U.S. companies, owned by Afghan-Americans, who conducted their business in the U.S. to Afghan ex-patriates.

Similarly, none of Applicant's connections raise any potential conflict of interest. He owes no obligation to any Afghan person or entity. Further, he has been in the U.S. more than 30 years. His wife and children are here. All his financial interests are here, to include the business he and his wife ran from 2006-2009. His contacts with family members and his friend in Afghanistan range from nearly non-existent to casual, and there is nothing in the circumstances of their being in Afghanistan, or in Applicant's contacts with them, to heighten the risk that he could be impelled or compelled to provide protected information to Afghanistan. Finally, Applicant has served with U.S. forces in Afghanistan, essentially producing classified intelligence for those forces and protecting U.S. interests.⁸ Essentially, he is the source of the information to be protected. None of the other disqualifying conditions are implicated by the facts in this

⁶AG ¶ 7(b).

⁷AG ¶ 7(e).

⁸A factor the Appeal Board has recently acknowledged as a legitimate factor for consideration in Guideline B cases. See, ISCR Case No. 07-00034 (5 February 2008); ISCR Case No. 04-02511 (20 March 2007).

case. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his family members in Afghanistan or his friend in Pakistan. Accordingly, I resolve Guideline B for Applicant.

The Government also failed to establish a case for disqualification under Guideline E. Applicant lacked either the knowledge or the intent to mislead the Government about his financial situation, which in any event never amounted to a financial concern. Accordingly, I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraphs a-h:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraphs a-b:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge