



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No.11-14319

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: David Horn, Esq.

04/23/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the security concerns related to foreign influence. His request for a security clearance is granted.

Statement of the Case

On October 25, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline B (Foreign Influence). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his Answer to the SOR, Applicant admitted all the factual allegations under Guideline B. The case was assigned to me on December 13, 2012. DOHA issued a

Notice of Hearing on January 17, 2013, setting the hearing date for February 5, 2012. Applicant requested a continuance after retaining counsel. I granted his request, and the hearing was rescheduled for March 4, 2013. At the hearing, I admitted two Government exhibits into evidence (GE 1-2). Applicant testified and offered four exhibits, admitted into evidence as AE A-D. DOHA received the transcript of the hearing (Tr.) on March 12, 2013.

Procedural Ruling

I take administrative notice of facts related to Afghanistan and Pakistan, included in U.S. Government documents provided by Department Counsel, and marked as Hearing Exhibit (HE) I. I also take administrative notice of Government documents related to Afghanistan, provided by Applicant, and marked as HE II. The facts are limited to matters of general knowledge, not subject to reasonable dispute, and are set out in the Findings of Fact.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant, 61 years old, was born in Afghanistan. He left in 1978 to pursue higher education. He completed a master's degree at a German university in 1982, and a doctorate at the same school in 1986. He immigrated to the United States in 1989, and became a naturalized U.S. citizen in 1998. Applicant has not served in either the U.S. or a foreign military. Applicant married in the United States in 1989. His wife, also born in Afghanistan, is a naturalized U.S. citizen. Her parents are citizens and residents of the United States. Her siblings are U.S. residents, and are all either U.S. citizens or legal permanent residents. Applicant and his wife have no children. He has an adult daughter from another relationship, who is a German citizen, residing in Germany. In 2009, he joined his current employer as a social media analyst, and now works for the contractor at a military installation as a cultural advisor. (GE 1, 2; Tr. 33-37, 58)

In 2009, he attended an eight-month program at a U.S. university that focuses on improving English language, research, and critical thinking skills to bring security-critical languages to federal agencies. He was awarded a certificate in August 2009. His lead instructor, who worked intensively with him, submitted a character reference. He describes Applicant as a "hard-working scholar and a genuinely sincere, honest, open and trustworthy gentleman." Of all those whom he had taught, he ranked Applicant as among the most committed to the United States and the federal service and the "least likely to harm the interests of the United States." (GE 1; AE C; Tr.31-32)

Applicant's parents are deceased, as well as five of his ten siblings. One brother, one half-brother, and two sisters are citizens and residents of Afghanistan. Applicant's

65-year-old brother lives in Afghanistan.¹ He has little schooling, has never been employed, and his sons support him. He has no connection with the government, and is unaware that Applicant is applying for a security clearance. When Applicant contacts his brother, he usually speaks with his brother's son. Applicant's nephew has no government connections, and is unaware that Applicant is seeking a security clearance. He was a student in Afghanistan, but has now moved to Greece. Applicant is in touch with him about once per month, primarily through email. Applicant has not been in touch with his brother in the past nine months. Applicant sent him about \$50 or \$60 per month for the past five or six years, but stopped about six months ago when he could no longer afford it. (GE 1, 2; Tr. 29, 37-41, 44-45, 50-51)

Applicant's half-brother is a citizen-resident of Afghanistan. He is 83 years old and ill. He retired from a government position as a clerk approximately 30 years ago. At his 2011 security interview, Applicant said he is in touch with his half-brother about once per year. At the hearing, he said he has differing amounts of contact with his different siblings, and had only spoken to his half-brother three times in the past 30 years. (GE 1, 2; Tr. 37-41, 43-46, 49)

Applicant's two sisters are 54 and 60 years old, and are homemakers. Applicant testified that he has infrequent contact with one of his sisters and only spoke to her a few times during the past 30 years. He used to speak with the other sister more often, about every two to three months. However, he has only been in touch with her once during the past nine months. Applicant also is in touch with this sister's son once or twice per month by email or telephone. His nephew teaches at an Afghan university. He has no connections with the Afghan government, and is unaware Applicant is applying for a security clearance. (GE 1, 2; Tr. 29, 37-41, 43-49, 51-52)

Applicant has another brother and a nephew who are citizens of Afghanistan. His brother did not graduate from high school, but he worked intermittently as a clerk for the Afghan interior department. He is 70 years old and retired. Applicant's brother and his son moved to Pakistan about 10 years ago because they believed it to be safer. During his 2011 security interview, Applicant described these family members as refugees. As of 2011, Applicant was in contact with his brother and nephew by telephone or email about once per month, but at the hearing, Applicant testified he has not been in touch with his brother for the past nine months. Applicant sent his brother \$50 or \$60 per month, until about six months ago. Neither his brother nor his nephew knows that Applicant is applying for a security clearance. (GE 1, 2; Tr. 29, 37-41, 47, 60)

None of Applicant's relatives living in Afghanistan or Pakistan have visited him in the United States. None of them is aware that he is applying for a security clearance. He is willing to end his financial gifts to his brothers if it presents a security concern. Applicant has the most frequent contact with his brother who lives in the Netherlands. As of 2011, they were in touch weekly by telephone or email. This brother is not alleged in the SOR. Applicant has not been to Afghanistan since he left to attend school in

¹ At the hearing, Applicant was unsure of his siblings' ages. I have used the estimated birth dates he provided in his security clearance application. (GE 1; Tr. 53)

Germany in 1978. He has no plan to return. He does not own property in Afghanistan.² Applicant has owned a home in the United States since 1999 or 2000. (GE 1, 2; Tr. 29, 37-46)

Applicant and his wife live in state A, and Applicant travels to state B to work at a U.S. military site. While working in state B, Applicant roomed with a friend who had studied with him. The roommate submitted a character reference describing Applicant's impressive knowledge of several languages. He also worked with Applicant as a social media analyst at the military site. Applicant's friend noted that, after four years of studying and working together, he learned that Applicant is trustworthy, and a good father and husband. He was able to personally observe Applicant's "strong commitment to his profession and to our country." He described Applicant as a "man of great integrity" who provides "important language and cultural skills in support of the U.S. mission in Afghanistan." Another coworker at the military site provided a character reference, and noted that Applicant's deep cultural knowledge and subject matter expertise are assets to the government in the war on terror. (AE A, D)

Applicant's senior advisor at the military site described Applicant's stalwart character and trustworthiness, and noted that he is "totally committed to our nation's security" and irreplaceable in the war against terrorism. In working to discredit online terrorist organizations, the senior advisor "came to rely on [Applicant], who embodies our core values, and who fights cyber terrorism to advance and protect our: 1. strategic interests; 2. way of life; and 3. to save our committed allies in Afghanistan and Pakistan from being over taken by extremists." He noted that he and Applicant have worked together against the Taliban, al-Qaida, and other terrorist networks. (AE B)

Administrative Notice³

The Islamic Republic of Afghanistan (Afghanistan)

Afghanistan is an Islamic Republic of 28 million people with a democratically elected president. It has had a turbulent political history, including an invasion by the Soviet Union in 1979. An overwhelming number of Afghans opposed the communist regime. After an accord was reached in 1989, and the Soviet Union withdrew from the country, fighting continued among the various ethnic, clan, and religious militias. By the end of 1998, the Taliban had risen to power and controlled 90 percent of the country, imposing aggressive and repressive policies, engaging in human rights violations, and providing sanctuary to Osama bin Laden.

² When Applicant's father passed away (date unknown), his house passed to his children, including Applicant. However, while Applicant was studying in Germany in the 1980s, his siblings sold the house. (Tr. 41)

³ The information for administrative notice appears in the U.S. government documents included in Hearing Exhibits I and II.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. Afghanistan's first democratic election took place in October 2004, and the new government took power. Despite that election, terrorists including al-Qaida and the Taliban, continue to assert power and intimidation within the country. The risk of terrorist activities remains high. Terrorist organizations target United States and Afghan interests by suicide operations, bombings, assaults, and hostage taking. The country's human rights record is poor and violence is rampant. According to the U.S. Department of State (DOS), insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence.

The United States is transitioning primary security responsibility to Afghan National Security Forces. According to the DOS, the United States and others in the international community in 2011 provided resources and expertise to Afghanistan in a variety of areas, including humanitarian relief and assistance, capacity-building, security needs, counter-narcotic programs, and infrastructure projects. The United States is committed to supporting the Afghan president's agenda for democracy, reintegration, economic development, and improving relations with Afghan regional partners. The United States plans to remain politically, diplomatically, and economically engaged in Afghanistan as a strategic partner for the long term.

The Islamist Republic of Pakistan (Pakistan)

Pakistan is a parliamentary federal republic in South Asia. It held successful elections in February 2008 and has a coalition government. However, terrorist networks operate within Pakistan. Members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) region, in Balochistan Province, and in the Khyber Pakhtunkhwa in the FATA region. The FATA region is a sanctuary to al-Qaida and other extremist groups. The Haqqani Network also operates with impunity in Pakistan. On September 7, 2012, the United States formally declared the Haqqani Network a foreign terrorist organization.

The DOS defines terrorist safe havens as "ungoverned, under-governed, or ill-governed physical areas where terrorists are able to organize, plan, raise funds, communicate, recruit, train, transit, and operate in relative security because of inadequate governance capacity, political will, or both."⁴ The DOS concludes that, despite efforts by Pakistani security forces, groups including Afghan and Pakistani militants and al-Qaida terrorists have safe haven in Pakistan, and train and operate there to plan attacks against the United States and its allies in Afghanistan. In 2011, U.S. special forces personnel found and killed al-Qaida leader Osama bin Laden in Pakistan.

⁴ U.S. Department of State, *Country Reports on Terrorism 2011*, Chapter 5, Terrorist Safe Havens. (HE I)

The Pakistani government has a poor human rights record. Reported violations include extrajudicial killings, torture and disappearances by security forces, lack of judicial independence, arbitrary arrest, honor crimes, wide-spread corruption, disappearance and imprisonment of political opponents, and trafficking in persons. The May 2012 *Human Rights Report* by the DOS notes that Pakistani domestic intelligence services monitored political activists, suspected terrorists, and the media. Credible reports indicate that authorities routinely used wiretaps, and intercepted and opened mail without requisite court approval.

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline B.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring that each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or his 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.⁸

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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. I have considered all the disqualifying conditions, especially the following:

- (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.

Family ties with a resident or citizen of a foreign country *per se* do not disqualify an applicant from obtaining a security clearance; such ties are only disqualifying if they create a heightened risk of foreign exploitation or a potential conflict of interest. Applicant has foreign family members with whom he maintains contact. In addition, the countries in question must be considered.⁹ Terrorists, including al-Qaida and the Taliban, operate against United States and Afghan interests within Afghanistan. Both Afghanistan and Pakistan have poor human rights records and are affected by terrorism and violence. Applicant's family ties in these countries create a heightened risk of foreign exploitation. AG ¶¶ 7(a) and (b) apply.

I have considered the mitigating conditions under AG ¶ 8, especially the following:

⁹ See ISCR Case No. 04-07766 at 3 (App. Bd., Sep 26, 2006) (the nature of the foreign government involved must be evaluated in foreign influence cases).

(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.; and

(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.

Although Afghanistan and Pakistan represent a heightened risk of exploitation, Applicant has not lived in Afghanistan for 35 years. His parents and five of his siblings are deceased. However, Applicant has three brothers, two sisters, and three nephews in foreign countries, with whom he maintained contact. Applicant described his contact with one brother as five or six times per year, but Applicant actually was in touch with this brother's son, rather than his brother, and that nephew has now moved to Greece. Although Applicant's half-brother was a government clerk, he retired 30 years ago, and Applicant has only spoken to him three times in the past 30 years. He has also only spoken to one of his sisters a few times in the past 30 years, and to the other about four or five times per year. Applicant's remaining brother was a clerk for the Afghan government. He and his son became refugees because of the violence in Afghanistan and moved to Pakistan about ten years ago. Applicant has not spoken to any of his foreign relatives in the past nine months. During the past six months, he has not sent even the minimal amount of money he had been sending to two of his brothers. None of them has come to the United States to visit him. None of them knows he works for a contractor or is applying for a security clearance. Given the status of his foreign relationships, it is unlikely Applicant would be placed in a position of having to choose between foreign and U.S. interests. AG ¶ 8(a) applies.

Applicant's contact with foreign family members is at most a few times per year, and at the least only three times in 30 years. His closest relationship is with his brother who is a citizen and resident of the Netherlands. Applicant left Afghanistan at the age of 17. He has no intention of returning in the future. He has not returned to Afghanistan to see his family, and they have not visited him in the United States. He has no bank accounts, property, or any other financial interests in Afghanistan that could be used to manipulate or pressure him. Applicant's foreign contacts are outweighed by his ties to the United States, where he has established his life over the past 24 years. He has been a U.S. citizen for 15 years. His wife and in-laws are U.S. citizens and residents. He owns his own home. He has served the U.S. Government through his work with a federal contractor. I conclude Applicant would choose the United States, were a conflict of interest to arise. Mitigating conditions AG ¶ 8(b) applies.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Guideline B cases do not focus on an applicant's loyalty to the United States, and here, Applicant's loyalty to the United States is not in question. However, Applicant's foreign contacts represented a security concern because of the potential for coercion or conflicts of interest. Applicant's interactions with most of his family members were infrequent – a few times per year – and more recently, he has not been in touch with them for about nine months. Applicant has no property or financial interests in Afghanistan or Pakistan. He has not been in Afghanistan in 35 years.

Applicant's ties to these countries are outweighed by his strong ties to the United States, including his wife, a U.S. citizen; his in-laws, who are U.S. citizens and residents, or legal permanent residents; his employment; and his U.S. real estate assets. Most significantly, Applicant's co-workers and advisor confirm that he is trustworthy, has performed with integrity, is committed to U.S. security, and since 2009, has worked diligently to assist the U.S. Government in neutralizing terrorist networks.

For all these reasons, I conclude Applicant has mitigated the cited security concerns. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has satisfied the doubts raised under the guideline for foreign influence.

Formal Findings

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

Paragraph 1, Guideline B FOR APPLICANT

Subparagraphs 1.a – 1.e For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge