



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



In the matter of:)
)
) ISCR Case No. 11-15218
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

December 4, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

In Applicant’s Answer to the Statement of Reasons (SOR), she admitted she has three brothers and two sisters that are citizens and residents of Afghanistan. One brother and one sister are employed by the Government of Afghanistan. Her mother is a naturalized U.S. citizen, but resides in Afghanistan. She failed to mitigate the Foreign Influence security concerns. Additionally, she was involuntarily terminated by two different employers in April 2006, July 2010, and November 2012, which raised security concerns under the guideline for Personal Conduct. She falsified questions regarding her July 2010 and November 2012 terminations on her electronic Security Clearance Application (e-QIP) dated March 12, 2013. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her e-QIP on March 12, 2013. On January 31, 2014, the Department of Defense (DOD) issued an SOR to Applicant detailing security concerns under Guideline B (Foreign Influence), and Guideline E (Personal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information*

within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR (Answer) on March 23, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on May 2, 2014. A notice of hearing was issued to Applicant on May 7, 2014, scheduling the hearing for June 30, 2014. At that time, Applicant was overseas and requested that the hearing be delayed until she returned to the United States. An amended notice of hearing was issued to Applicant on May 27, 2014, scheduling the hearing for October 24, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. It also submitted Hearing Exhibit (HE) I, which verified that GE 1 through 5 had been served upon the Applicant. Applicant testified on her own behalf and submitted Exhibits (AE) A through I. AE A through I were admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on November 3, 2014.

Procedural Ruling

Request to take Administrative Notice

At the hearing, the Government requested that I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a five-page summary of the facts, supported by six Government documents pertaining to Afghanistan, identified as Hearing Exhibit (HE) II. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 56 years old. She is employed by a Government contractor as a translator. She was born in Afghanistan and immigrated to the United State approximately 18 years ago. She moved to the United States because she wanted to live in peace and have her children pursue their educations here. She was naturalized as a U.S. citizen in May 1997. She possesses a bachelor's degree from a university in Afghanistan. She is married and has five adult children. Applicant's children and husband all reside in the United States and are U.S. citizens. Applicant and her husband own a house in the United States. Her bank accounts are located solely in the United States. She did not provide the value of her assets. (GE 1; AE I; Tr. 34-37, 43-46.)

Foreign Influence

The SOR alleged that Applicant's three brothers and two sisters are citizens and residents of Afghanistan (SOR subparagraph 1.a). Two of her siblings are alleged to be employed by the Government of Afghanistan (SOR subparagraph 1.b). Her mother, a naturalized U.S. citizen, was alleged to reside in Afghanistan (SOR subparagraph 1.c). Applicant admitted all of these allegations.

Applicant has 11 siblings: five brothers and six sisters. Two sisters and one brother are naturalized U.S. citizens and reside in the United States. One sister is a citizen of the United Kingdom and resides there. One brother is deceased.¹ Three brothers and three sisters are citizens and residents of Afghanistan. (GE 1; 47-50.)

In her Answer, Applicant admitted that two siblings work for the Government of Afghanistan. In her 2013 e-QIP and 2014 Answer, Applicant identified that her 65-year-old brother had a foreign military affiliation through his work as a director of forces "GTL Organization for Education." She also stated that her 57-year-old sister was employed by the Afghan Ministry of Education as a teacher. She offered no further details about their employment. (GE 1; Tr. 40-43, 47-50.)

Applicant's mother, who is a naturalized U.S. citizen, currently resides in Afghanistan. She is 85 years old. She has traveled between the United States and Afghanistan to visit family, but intends to remain in Afghanistan because she is ill and wants Afghanistan to be her final resting place. Applicant did not specify how her mother is supported. (GE 1; Tr. 40-43.)

Afghanistan

Afghanistan's stability is threatened by the convergence of insurgent, terrorist, and criminal networks. Corrupt government officials are often interlinked via multi-layer connections, making ties between officials and criminal activity difficult to prove and prosecute. (HE I.)

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly sophisticated and destabilizing. Human rights problems include: armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; torture and abuse of detainees by security forces; extrajudicial killings; poor prison conditions; arbitrary arrests and detention; prolonged pretrial detention; judicial corruption; violation of privacy; restrictions on freedom of speech; and abuse of children. 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. U.S. citizens who are also

¹ At the hearing Applicant testified that her brother, who worked for the government of Afghanistan, passed away three years ago. (Tr. 47-50.) When she completed her e-QIP in 2013, she only identified one brother as deceased. She presented no evidence that an additional brother passed away.

citizens of Afghanistan may be subject to other laws that impose special obligations. (HE I.)

Personal Conduct

The SOR alleged that Applicant exercised conduct involving questionable judgment on multiple occasions. She was terminated from three different positions from April 2006 to November 2012. She failed to disclose her 2010 and 2012 terminations on her 2013 e-QIP. In her Answer, Applicant admitted she was terminated three times, but denied falsifying her e-QIP.

In April 2006 Applicant was working overseas. An initial JPAS report to the DoD, dated October 24, 2006, reflected that Applicant was terminated by her employer in April 2006 for “Personal Conduct” including “unreliability, tardiness, and forgery.” (GE 2.) Applicant testified that her site manager filed false incident reports against her in retribution, after Applicant defended another woman in their office that was the subject of sexual harassment by the site manager. She claimed that an Army lawyer “cleared” the situation and the site supervisor was later fired. She failed to present any documentation to support her testimony that the situation was resolved in her favor. JPAS reflected a “final” entry, dated October 18, 2010, which continued to show she was terminated by this employer for “unreliability, tardiness, and forgery.” She indicated as a result of this incident, her security clearance was denied or revoked. (GE 3; GE 4; Tr. 37-39, 50-51.)²

In July 2010 Applicant was involuntarily terminated by her employer for improper use of leave under the Family Medical Leave Act. Applicant testified she left her position voluntarily when her husband and son became ill. (GE 3; Tr. 53-54.)

Applicant was rehired in October 2010 by the company that terminated her in July 2010. However, she was again involuntarily terminated on November 7, 2012, due to job abandonment, after she failed to return to work. Applicant testified that she left her position voluntarily when she became ill with asthma. She was told that if she took more than 30 days leave, she would be terminated, despite having a letter from her doctor. In her March 25, 2013 counter-intelligence screening, she indicated she was on vacation in the United States when her mother fell ill. She felt she needed to care for her mother, but was told that if she did not return to work within the allotted time she would be terminated. Applicant chose not to return to work. It is unclear from the record whether Applicant went to Afghanistan to care for her mother or if she cared for her mother in the United States. She claimed to have a letter from her employer stating that she resigned from the position, but she did not present it into evidence. (GE 3; Tr. 52-53.)

In Applicant’s March 12, 2013 e-QIP, she answered, “No,” in response to “Section 13C-Employment Record. Have any of the following happened to you within

² Applicant indicated she never had a security clearance eligibility/access authorization denied, suspended, or revoked on her 2013 e-QIP. (GE 1.)

the last seven (7) years at employment activities that you have not previously listed? Fired from a job? Quit a job after being told you would be fired? Have you left a job by mutual agreement following charges or allegations of misconduct? Left a job by mutual agreement following notice of unsatisfactory performance?" She failed to disclose the July 2010 and November 2012 terminations. (GE 1.) Applicant claimed she did not know she was terminated. (Tr. 56.)

Applicant produced Letters of Recommendation and Appreciation to demonstrate that despite the terminations, her Government customers found that she was dedicated to her position and did an excellent job on assigned tasks. (AE A; AE C; AE E; AE F; AE G.) She received certificates of merit and appreciation for her exceptional performance. (AE B; AE D; AE E; AE F; AE H.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government

reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are applicable in this case:

- (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.

To be fully applicable, AG ¶ 7(a) requires both the presence of family members (or business or professional associates, friends, or other persons) who are citizens and/or residents of a foreign nation, and substantial evidence of a heightened risk. Applicant's three brothers and three sisters are citizens and residents in Afghanistan. Her mother is a U.S. citizen residing in Afghanistan. The heightened risk required to

raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist groups and other criminal organizations operate within Afghanistan. Further, the government of Afghanistan has been identified as committing human rights violations. In this instance, a heightened risk is present. The evidence is sufficient to raise AG ¶ 7(a).

Applicant has close familial ties to her mother, brothers, and sisters, who are citizens and residents in Afghanistan. Two of her siblings are employed by the Government of Afghanistan. These familial ties in Afghanistan could potentially create a conflict of interest between her duty to protect classified information and her desire to help her foreign family members. AG ¶ 7(b) applies.

AG ¶ 8 provides conditions that could mitigate security concerns raised under this guideline. I considered all of the mitigating conditions under AG ¶ 8, including:

(a) the nature of the relationships with foreign persons, the country in which these people 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.

Applicant has lived in the United States for more than 18 years. Her assets are in the United States. Her children were raised here. She has worked for a government contractor and has been recognized by those that know her for exceptional contributions through her work as a translator. These factors weigh in the Applicant's favor and are mitigating, in part. However, she has close ties of affection to her family in Afghanistan. Two of her siblings work for the Afghan Government. I cannot conclude that it is unlikely Applicant 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.; that she can be expected to resolve any conflict of interest in favor of the U.S. interest; or that there is little likelihood that her foreign relatives could create a risk for foreign influence or exploitation. Applicant bears the burden to introduce sufficient evidence to mitigate the Government's concerns with respect to those issues, and she has not met this burden. None of the above mitigating conditions apply.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations.

Applicant failed to identify her 2010 and 2012 terminations on her 2013 e-QIP. She knew she had been terminated after she failed to report to work on both occasions. Yet, she willfully chose not to disclose them on the e-QIP. This behavior indicates questionable judgment and untrustworthiness under AG ¶ 16(a).

Applicant has been terminated by two different Government contractors on three occasions. Those terminations demonstrate a pattern of violating her employer's policies, which led to terminations. She failed to substantiate her claims that the terminations do not show she exercised questionable judgment, untrustworthiness, unreliability, lack of candor, or unwillingness to comply with rules and regulations. AG ¶ 16(d) applies.

AG ¶ 17 provides conditions that could mitigate security concerns raised under this guideline. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, the evidence does not support the application of any one of them. Applicant did not make prompt or good-faith efforts to correct her falsification or concealment. She provided no information that indicates she was ill-advised in completing her SF 86. She failed to support her explanations regarding the terminations with documentation. Given the falsification on her e-QIP, her credibility is questionable. Falsifying material information is a serious offense and Applicant has provided no evidence indicating that similar lapses in judgment are unlikely to recur. Further, she failed to take responsibility for her actions that led to the terminations. She has not provided sufficient evidence to meet her burden of proof to mitigate the personal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a patriotic American citizen, whose work has been of value to our military mission in Afghanistan, as reflected in letters of recommendation and certificates. However, she has close ties to her family in Afghanistan, which remain unmitigated. Further, she has a questionable employment track record and has not been forthright in disclosing it to the Government. She omitted her terminations on her security clearance application, and failed to disclose that her security clearance had been denied or revoked as a result of the 2006 incident. She offered varying and inconsistent explanations regarding the reason she was terminated in November 2012. Overall, Applicant lacks credibility. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Influence or Personal Conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant
Subparagraphs 2.b:	Against Applicant
Subparagraphs 2.c:	Against Applicant
Subparagraphs 2.d:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge