



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



In the matter of:)	
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)	ISCR Case No. 11-15258
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

June 21, 2013

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on July 25, 2011. (Item 5.)¹ On November 28, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B (Foreign Influence) and Guideline F (Financial Considerations). 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) effective within the Department of Defense on September 1, 2006.

Applicant submitted an Answer to the SOR, including attachments, on January 10, 2013, and requested a decision be made without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to Applicant on March 5, 2013. Applicant received the FORM on April 14, 2013, and was given 30 days to submit any additional information. Applicant submitted additional information in a timely fashion, which is

¹Applicant re-signed Item 5 on August 4, 2011.

admitted without objection by Department Counsel. (Applicant Exhibit A.) The case was assigned to me on May 6, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Islamic Republic of Afghanistan. Applicant did not object. The facts administratively noticed are set out in the Findings of Fact, below.

Amendment to the Statement of Reasons

Applicant supplied attachments to his Answer concerning the four Guideline F allegations. Paragraph III of the FORM states, "The Government, by Department Counsel, pursuant to ¶ E.3.1.13 of the Directive, amends the SOR, in order to conform to the record evidence, by striking subparagraphs 2.a. through 2.d. The Government withdraws the Guideline F concern." Accordingly, no findings will be made on those allegations.

Findings of Fact

Applicant is 48 and married. He has been employed by a defense contractor since July 2011 as a linguist, and seeks a security clearance in connection with his employment in the defense industry. Applicant denied the factual allegations in the SOR. The following facts are based on his statements and attachments to the Answer to the SOR, as well DoD interrogatories and counter-intelligence interviews. (Items 3, 5, and 6.)

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness. Applicant was born and raised in Afghanistan. He met and married his wife in 1993 in Pakistan. (Item 5.) She obtained a visa through the immigration lottery in 1998. The two of them came to the United States in 1999. His wife is a naturalized citizen of the United States. She obtained her citizenship in 2005. (Item 4 at question 17A, Item 5 at 29.) He has three children, one of whom was born in Afghanistan and is a naturalized citizen of the United States. His other children are native-born American citizens. He became a naturalized American citizen in May 2010. (Item 4 at question 9, Item 5 at 24.)

1.a. Applicant's mother no longer lives in Afghanistan. She has been a permanent resident of the United States since November 24, 2012. She lives with Applicant's brother, who is a naturalized citizen of the United States and employed by a county department of public safety as a resident system administrator. (Item 3 at 3-6, Item 5 at 31.)

1.b. Applicant's father no longer lives in Afghanistan. He has been a permanent resident of the United States since November 24, 2012. He also lives with Applicant's brother, who is a naturalized citizen of the United States and employed by a county department of public safety as a resident system administrator. (Item 3 at 7-8)

1.c. Applicant has three brothers. (Item 4 at Section 18.) As stated above, one of his brothers is a naturalized citizen of the United States and employed by a county department of public safety as a resident system administrator. Applicant's two other brothers do currently live in Afghanistan. Both of them are professional men with advanced degrees. He has minimal contact with them. (Item 5 at 29; Applicant Exhibit A at 3-4.) Applicant states in Item 3 at page 10, "My both brother[s] with [their] families [are waiting] for United States permanent visa programs, to [join] rest of family and living together."

1.d. Applicant has four sisters. (Item 4 at Section 18.) One of his sisters is now a permanent resident of the United States, and is living in the United States. (Item 3 at 11, Item 5 at 32.) A second sister is a citizen of Germany, where she lives and is employed as a school teacher. (Item 5 at 33.) A third sister lives with her husband and family in Dubai, United Arab Emirates. (Item 5 at 34.) His fourth sister lives with Applicant's brothers in Afghanistan. She is also waiting to emigrate to the United States. (Applicant Exhibit A at 4.)

1.e. Applicant has three uncles. One lives in Afghanistan. He worked for the Afghan government until about 1992. Applicant has no contact with this uncle. (Item 5 at 5-6, 11-12.) The other two are no longer Afghan citizens. One is a Canadian citizen, and resides there. The second is a citizen of Australia and lives there. (Item 3 at 12.)

Applicant states that none of his family currently works for the government of Afghanistan or any other organization of possible concern. (Item 3 at 12.)

When Applicant obtained his job he was admittedly in financial difficulties. He was very open with his future employer and the Government about his debt situation. (Item 4 at question 26, Item 5 at 25-27, and Item 6 at 9-10.) He stated in August 2011, "If I could have a good job could pay these off. I am stuck now. When you do not have good credit then this means you have no life." (Item 6 at 10.) These debts were the basis of the Guideline F allegations. Once he obtained his current employment Applicant paid off all of his past-due debts, which is why the allegations under Guideline F were withdrawn. (Item 3 at 13-40.) He has continued to save his money and, according to Applicant, has somewhere between \$65,000 and \$100,000 in the bank. (Item 5 at 45; Applicant Exhibit A at 5.)

Regarding Afghanistan Applicant has said, "Past situation is very bad, but current situation is slowly getting better and WE hope that it gets better. I am not going back there, they are 200 years behind the U.S." (Item 6 at 2.) (Emphasis in original.)

Applicant has submitted several letters of recommendation and commendation about his job, which is described by one correspondent as involving "sensitive intelligence information in a combat environment." This person, a senior specialist in this specific field, goes on to state, "In my 14 year . . . career, I have never worked with a more dedicated person or more qualified translator." (Item 3 at 41.)

The officer in charge (OIC) of a field team Applicant worked with submitted a memorandum of appreciation. He described in detail Applicant's contributions to the mission in Afghanistan, including his participation in specialized interviews. The OIC concludes, "I want to personally thank you for the hard work and long hours you were willing to give to this team. Thank you for providing me with the outstanding advice on cultural issues with the LN we had to deal with. If it was not for you and your vast abilities the teams and I would not have been able to do our missions." (Item 3 at 42.)

A second OIC also submitted a memorandum. He also spoke highly of Applicant's specific mission contributions. He concluded by saying, "[Applicant] has clearly demonstrated his dedication to both the mission of the United States military and the successful reconstruction of Afghanistan. There is no question that [Applicant] is an essential member of the [team] and we would not be able to meet our mission without his expertise." (Applicant Exhibit A at 8.)²

Finally, concerning his life as an American and an interpreter/linguist in Afghanistan, Applicant stated:

Since August 2011 I [have] been working for the U.S. Army with my heart and soul in Afghanistan. . . . I am very aware of the enemies the risk of threat and sensitivity of my work and duties . . . Finally, I would like to clarify my standing regarding my citizenship as being a United States naturalized citizen. I am loyal, honest, hard worker and with dignity, trustworthy and faithful records during my service with U.S. Army, and the past 14 years in United [States]. . . . I took my oath to be a loyal, honest and with dignity and responsible citizen of the United [States] of America, I will stand forever to my promise. (Applicant Exhibit A at 6.)

I also take administrative notice of the facts concerning the Islamic Republic of Afghanistan, as set forth in the FORM at Section V. 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 Afghan government, as well as the local populace and U.S. persons and interests.

²See Applicant Exhibit A at 9-10.

Policies

Security clearance decisions are not made in a vacuum. 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 and mitigating conditions, which are to be used as appropriate 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 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. In addition, the administrative judge may also rely on his or her own common sense, as well as his or her knowledge of the law, human nature and the ways of the world, in making a reasoned 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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's circumstances and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows under 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.

Applicant has family connections to Afghanistan. The following disqualifying conditions under AG ¶ 7 apply to this case based solely on the facts:

(a) contact with a foreign family member . . . 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 . . . 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 . . . by providing that information.

Applicant has provided sufficient evidence to show that the following mitigating conditions under AG ¶ 8 apply to this particular case, given his particular background:

(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.

Applicant has submitted considerable evidence to show that he has substantial family and financial ties in the United States that outweigh his relationship to Afghanistan and his relatives there. His evidence also shows that he does not have a conflict of interest between his loyalties to Afghanistan, the country of his family and birth, and the United States. His immediate family lives in the United States, and most of his extended family lives in the United States or allied nations. What is particularly noteworthy is how Applicant has diligently applied himself to paying off his past-due indebtedness once he obtained his employment and began making a good salary.

Applicant has worked hard at his job, as shown by the letters and certificate of appreciation that he has received. His job is of particular importance, and he is acknowledged to be one of the best practitioners. His service in Afghanistan is without any indication that he had breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board stated the following 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 the 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 5 (App. Bd. Mar. 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 had made a significant contribution to the national 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 a foreign power's attempts at coercion or exploitation.

See *also*, ISCR Case No. 12-09326 at 2 (App. Bd. Jun. 18, 2013). Without being more specific than is appropriate, I find that Applicant's service in his present employment occurred under such circumstances and produced such contributions.

Based on my analysis of the available information, Applicant has overcome the adverse inference of his family members' presence in Afghanistan. Guideline B is found for Applicant.

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. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. My Guideline B analysis is applicable to the whole-person analysis as well. Applicant is a patriotic American citizen, whose work has been of particular value to our military mission in Afghanistan. He presented considerable evidence showing that his preference is for the United States and not Afghanistan. Accordingly, I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his foreign connections. He is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

WILFORD H. ROSS
Administrative Judge