



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



In the matter of:)	
)	
)	ISCR Case No. 11-15250
)	
Applicant for Security Clearance)	

Appearances

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

07/15/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern generated by his relatives who are citizens of Afghanistan and reside in Pakistan. Clearance is denied.

Statement of the Case

On September 6, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. 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) implemented by the Department of Defense on September 1, 2006. Applicant answered the SOR on October 6, 2012, admitting the allegations and requesting a decision on the record evidence. On January 29, 2013, Department Counsel prepared a File of Relevant Material (FORM). In the FORM, Department Counsel amended the SOR by withdrawing subparagraphs 1.c, 1.d, 1.f, and 1.h, amending subparagraph 1.g, and adding subparagraph 1.i.

Applicant received the FORM on January 30, 2013, and filed a response on March 28, 2013. Applicant did not answer amended subparagraph 1.g in his response. Because Department Counsel amended subparagraph 1.g to correspond to information Applicant provided in his answer, I have construed his non-response to amended subparagraph 1.g as an admission. The case was assigned to me on March 28, 2013.

Ruling of Evidence

At Department Counsel's request, I took administrative notice of facts about Pakistan and Afghanistan set forth in what I marked as Items I through X. The following is a summary.

1. Pakistan is a developing country. Although it is ostensibly a federal republic, its human rights record remains poor. (Item X at 1 and Item VII at 1) The Pakistani government maintains several domestic intelligence services that monitor politicians, political activists, and journalists. (Item X at 13)

2. Pakistan's government does not entirely control its country, and the infrastructure of significant parts of the country has been devastated by natural disasters over the years. Ongoing internal tensions, ethnic and religious strife, and general lawlessness prevail in many parts of the country. (Item I at 2)

3. Pakistan is home to a number of extremist groups, including the Taliban and Al-Qaeda, that target American and other Western interests, high-level Pakistani government officials, and members of indigenous minority and religious groups (Item IV at 1; Item I at 2) Pakistan's government actively and passively supports many terrorist groups, frustrating U.S. interests. (Item VI at 4) U.S. citizens throughout Pakistan have been kidnaped for ransom. (Item IV at 3)

4. In May 2011, U.S. forces killed Osama bin Laden, mastermind of the 911 attacks and numerous other terrorist attacks around the world. He had been living in hiding in an affluent suburb of Islamabad, Pakistan's capital, in a home eight times larger than any homes in the community, reinforced by extraordinary security measures including 12 to 18 foot walls topped with barbed wire and two security gates. (Item VIII at 2)

5. Although Afghanistan has experienced more aggressive and coordinated terrorist attacks from the Taliban and other groups in anticipation of the 2014 withdrawal of Coalition forces, Afghan security forces have progressed in quantity, quality, and effectiveness. (Items IV and V)

6. Pervasive corruption remains a problem in Afghanistan. (Item VI at 5)

Findings of Fact

Applicant is a 66-year-old married man with two adult children from a prior marriage. He was born and raised in Afghanistan and immigrated to the United States in

1998. He worked as a cab driver for the next 13 years before taking a job with a defense contractor as a translator in 2011. (Item 4 at 11-17)

Applicant earned a bachelor's degree in linguistics from a university in Afghanistan in 1969. He then moved to Bulgaria in 1970 to pursue a graduate degree in wine making. He lived there for the next seven years, returning to Afghanistan in 1977. After returning, Applicant was drafted to serve in Afghanistan's army. He served for six months. (Item 4 at 25)

After the Soviet Union invaded Afghanistan in 1979, Applicant fled. He lived in various countries throughout Europe for the next 19 years before immigrating to the United States in 1998. He became a naturalized U.S. citizen in 2005.

Applicant's parents immigrated to the United States during a year unknown from the record. Applicant's father died in 1994. His mother remains in the United States and is a U.S. citizen. Applicant has five siblings. None of them are Afghan citizens. Three of them are U.S. citizens. The other two are Canadian and German citizens, respectively. (Item 4 at 27-28)

Applicant's father was a prominent government official during the rule of Afghanistan's last monarch, during the 1960s and early 1970s. He owned an estate located on hundreds of acres of land, in addition to several acres of land across different areas in Afghanistan. (Item 9 at 3) After the Soviet invasion, the puppet government seized the property. At some point during the ensuing 20 years, the property was transferred to private owners. (Item 9 at 3) During the civil war, the government lost the records containing the identity of the owners. The putative owners did not live in the house and it remained vacant.

After the U.S.-led invasion of Afghanistan in 2001, Applicant and his siblings sought to reclaim their property. For the next six to seven years, Applicant, on behalf of his family, engaged in a protracted legal dispute with the Afghan government for their property to be returned. During this period, he traveled to Afghanistan nine times, staying, on average, approximately four months per trip.

In 2008, Applicant prevailed. The Afghan government returned the property to Applicant. Subsequently, he sold it for approximately \$180,000 USD, splitting this profit among his siblings. (Item 9 at 4; Item 5 at 11) Applicant and his siblings continue to own miscellaneous property throughout Afghanistan. (Item 9 at 4; Response to FORM at 2) Applicant does not intend to take any steps to reclaim this land. (Item 9 at 4) Applicant owns no property in the United States.

When Applicant was traveling frequently to Afghanistan, he stayed in touch with several distant relatives who lived there. Other than a cousin with whom he talks to by phone once per year, he no longer speaks with any of these relatives. (Item 9 at 6, 9)

Applicant's wife is a citizen of Afghanistan. He met her in 2004 during one of his trips to Afghanistan to resolve the property dispute, and they married later that year. In April 2008, she moved to the United States. Currently, she is a permanent U.S. legal resident.

Applicant's parents-in-law are citizens of Afghanistan who live in Pakistan. His father-in-law is a security guard, and his mother-in-law is a hairdresser. (Item 9 at 7) He met them during his wedding in 2004 and visited them in Pakistan in 2005. He talks to them approximately five times per year. (Item 9 at 7)

Applicant's wife has eight siblings. (Item 6) Four of them, (two brothers and two sisters), live in Pakistan. All of them are students, and the youngest is 11 years old. Applicant speaks with these siblings-in-law approximately once or twice per year. (Item 6)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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. 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."

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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 an 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.

Section 7 of Executive Order 10865 provides that 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

Under this guideline, “foreign contacts and interests may be a security concern if an 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 interests.” (AG ¶ 6) Although Afghanistan’s security forces have improved in quality, quantity, and effectiveness, Afghanistan remains a developing country with an evolving rule of law. Moreover, the Taliban insurgency is still resilient, and it is being supported by foreign fighters primarily from Pakistan, a haven for extremist, anti-American groups, including Al Qaeda. Consequently, Applicant’s cousin, an Afghan citizen and resident, and his in-laws, Afghan citizens living in Pakistan, trigger the application of AG ¶ 7(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 risk of foreign exploitation, inducement, manipulation, or coercion.”

Applicant’s relationship with his wife raises the issue of whether AG ¶ 7(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,” applies. Afghanistan remains a troubled country with an active insurgency with whom it is still fighting, with U.S. assistance. However, Afghanistan is not attempting to project power worldwide through the brute intimidation of its citizens abroad. Consequently, AG ¶ 7(d) does not apply to Applicant’s relationship with his wife.

Although Applicant once owned a substantial amount of land in Afghanistan, he sold it and liquidated the proceeds between him and his relatives. All that remains of his property in Afghanistan are some miscellaneous holdings scattered throughout the country. AG ¶ 7(e), “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,” does not apply. I resolve SOR subparagraph 1.i in Applicant’s favor.

Applicant only talks to his cousin living in Afghanistan and his siblings-in-law living in Pakistan approximately once per year. AG ¶ 8(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,” applies. Applicant has mitigated the security concern generated by these relatives. Therefore, I resolve SOR subparagraphs 1.e and 1.g in Applicant’s favor.

Conversely, there is a presumption that relationships with one's parents-in-law are not casual. Consequently, despite the fact that Applicant has only seen his parents-in-law twice and talks to them only five times per year, AG ¶ 8(c) does not apply.

Although Applicant has lived in the United States for approximately 15 years, he has spent a substantial amount of time living in Afghanistan. He provided little evidence about the depth of his relationships in the United States. Applicant deserves credit for his work as a translator; however, he provided minimal evidence of variables that could favorably influence the Guideline B analysis such as the quality of his work or whether he was translating under dangerous circumstances. I conclude that neither AG ¶ 8(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.," nor AG ¶ 8(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," apply.

Whole-Person Concept

Under 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) 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 common sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Upon evaluating this case in the context of the whole-person concept, I conclude Applicant has failed to carry the burden. Clearance is denied.

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
Subparagraph 1.a:	For Applicant

Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.d:	WITHDRAWN
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	WITHDRAWN
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	WITHDRAWN
Subparagraph 1.i:	For 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.

MARC E. CURRY
Administrative Judge