



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 12-00913
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)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: Joseph Testan, Attorney At Law

February 11, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on August 25, 2009 and October 3, 2011. (Government Exhibits 1 and 2.) On a date uncertain, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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 after September 1, 2006.

The Applicant answered the SOR in writing through counsel on September 6, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on November 28, 2012, and the case was assigned to the undersigned Administrative Judge that same day. DOHA issued a notice of hearing on November 28, 2012, scheduling the hearing for December 5, 2012. Due to an unexpected illness, the Administrative Judge cancelled the hearing. On December 18, 2012, the hearing was rescheduled for December 26, 2012. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant presented seven exhibits, referred to as Applicant's exhibits A through G, which were admitted without objection. He also testified on his

own behalf. DOHA received the transcript of the hearing (TR) on January 4, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Afghanistan. (Tr. p. 29.) Applicant had no objection. (Tr. p. 29.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDING OF FACTS

The Applicant is 45 years old and married with two children. He is employed with a defense contractor as a Linguist, and seeks a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence, which could result in the compromise of classified information. The Applicant admits in their entirety the allegations set forth under this guideline, except 1(b), wherein he admits the allegation in part and denies it in part.

The Applicant was born and raised in Kabul, Afghanistan. In 1989, at the age of twenty-one, during the civil war in Afghanistan, the Applicant, who was entirely against the Afghan political regime, left the country and moved to Pakistan. He found Pakistan to be too religious for him, and in June 1990, he was smuggled into the United States. He was taken to the immigration detention center where he requested political asylum that was granted. It was at that point that the Applicant decided to make the United States his permanent home. In October 1996, he became a naturalized citizen of the United States. In 1998, he married a woman he met in Pakistan through an arranged marriage. His wife is now a naturalized American citizen and they have two native born American children.

From January 2007 to May 2012, the Applicant worked as a linguist for the United States Government. (Applicant's Exhibit G.) Given the nature of the work it was required that he travel to Afghanistan for extended periods and then returned to the United States for brief periods in order to visit his family. This work pattern continued until his security clearance became an issue in May 2012. During the Applicant's periodic work in Afghanistan, the Applicant exhibited an exemplary work record and was never cited for a security clearance violation. (Tr. p. 44.)

The Applicant has received a number of Certificates of Appreciation for his work in Afghanistan. (Applicant's Exhibit E.) Letters of recommendation from the Applicant's supervisor, professional colleagues, and work associates, indicate that the Applicant is considered to be competent, reliable, dedicated and trustworthy. He is described as an individual with the highest standards of honesty and integrity despite the numerous threats to his personal safety. He has excellent communication skills regardless of the economic level of the individual he is talking to. He is said to be an extremely hardworking top-performing linguist. He has consistently received unsolicited praise for his work from the client, commending him for his outstanding level of service and professionalism. The Applicant has made great sacrifices to benefit the United States Government against foreign and domestic threats throughout the years. (Applicant's Exhibit A.)

The Applicant has casual and infrequent contact with a few relatives in Afghanistan. He has a sister who is a resident and citizen of Afghanistan. She is significantly older than the Applicant and he contacts her only for religious ceremonies, about two to three times a year. (Tr. p. 52.) The Applicant's father is a citizen of Germany, and he resides in Germany. (Applicant's Exhibits A and B.) His father left Afghanistan in 1992, and he has never returned. His father owns an apartment in Afghanistan that the Applicant's sister resides in. The Applicant's father-in-law and mother-in-law are citizens and residents of Afghanistan. He speaks to his mother-in-law in Afghanistan about once a year or once every two years. He explained that his father-in-law has lost his vision and is in his late 80's or early 90's. None of his relatives in Afghanistan know what the Applicant does for a living. (Tr. p. 54.)

The Applicant also has two brothers who are citizens and residents of Germany. He has four living sisters and one that is deceased. Two of his sisters live in Germany and are German citizens. One of sisters lives in Sweden and is a Swedish citizen. The fourth, as stated, lives in Afghanistan.

The Applicant, his wife, and their children are American citizens who have fully adopted the American lifestyle and intend on staying in the United States for the rest of their lives. The Applicant has no assets of any kind in Afghanistan and provides no financial support to anyone there. The Applicant owns a house in the United States that he purchased in December 2009, and he has both a checking and savings account in the United States. (Applicant's Exhibit C.) The Applicant testified that in the event of a conflict between his family in the United States and his relatives in Afghanistan, he would without question resolve the matter in favor of his family in the United States. He further stated that in the unlikely event that someone put pressure on him to reveal classified or sensitive information by threatening his sister or mother-in-law or father-in-law in Afghanistan, he would report it to his security department and not give any sensitive information to anyone. (Tr. pp. 56-57.)

I have taken official notice of the following facts concerning Afghanistan. Afghanistan is an Islamic republic. It has been an independent nation since August 19, 1919, after the British relinquished control. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union. In

mid-1990's the Taliban rose to power largely due to the anarchy and the divisions of the country among warlords that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin-Laden since the mid-1990's, to al-Qa'ida generally, and to other terrorist organizations. After September 11, 2001 terrorist attacks, U.S. demands that Afghanistan expel Bin-laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001.

Although there has been some progress since the Taliban was deposed, Afghanistan still faces many daunting challenges, principally defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic and political infrastructure. Human rights problems included extrajudicial killings; torture and other abuse; poor prison conditions; widespread official impunity; ineffective government investigations of local security forces; arbitrary arrest and detention; judicial corruption; violation of privacy rights, restrictions of freedom of religion, limits on freedom of movement; violence and societal discrimination against women; sexual abuse of children; abuses against minorities; trafficking in persons; abuse of worker rights; and child labor. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical, and travel to all areas of Afghanistan remains unsafe, due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups and the possibility of terrorist attacks.

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline B (Foreign Influence)

6. *The Concern.* 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.

Conditions that could raise security concerns:

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 heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

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;

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;

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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The voluntariness of participation;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . 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."

CONCLUSION

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be subject to foreign influence that may lead to poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's situation and the 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 a security clearance.

This evidence presented indicates that the Applicant has foreign relatives that may make him unduly subject to undue influence. Because of the scope and nature of the Applicant's personal situation, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline B of the SOR.

Under Foreign Influence, Guideline B, Disqualifying Condition 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 heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. Mitigating Conditions 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; 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, and 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 also apply.

The Applicant has lived in the United States almost half of his life, for the past twenty-two years, and has firmly established his roots here. He, his wife, and their children are all citizens of the United States and they plan to remain here. All of his immediate family reside in the United States. All of his assets of any kind are in the United States. Clearly, he has no loyalty to Afghanistan. In fact, the only contact he has with any relatives in Afghanistan is infrequent, casual and extremely limited. Furthermore, there is no emotional bond that the Applicant has with his foreign family members. He has no close association with anyone in Afghanistan. Therefore, his foreign contacts do not pose a security risk. Under the heightened scrutiny analysis, the Applicant's family in Afghanistan does not pose a significant security risk. Accordingly, I find for the Applicant under this guideline.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, and a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information. I have also considered his favorable evidence, including his awards and favorable letters of recommendation. Overall the evidence clearly mitigates the negative effects his foreign influence can have on his ability to safeguard classified information.

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

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:	For the Applicant.
Subpara. 1.a.:	For the Applicant.
Subpara. 1.b.:	For the Applicant.
Subpara. 1.c.:	For the Applicant.

CONCLUSION

In light of all 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 the Applicant.

Darlene Lokey-Anderson
Administrative Judge