



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



In the matter of:)
)
) ISCR Case No. 12-00931
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel
For Applicant: Richard L. Morris, Esquire

10/17/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 26, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 4, 2013, detailing security concerns under Guideline B, Foreign Influence. The 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 (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on May 6, 2013, and he answered it on May 7, 2013. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on July 25, 2013. DOHA assigned the case to another administrative judge on July 31, 2013. For workload reasons, I received the case assignment on August 6, 2013. DOHA issued a Notice of Hearing on August 30, 2013, and I convened the hearing as scheduled on September 24, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant and one witness testified. He submitted exhibits (AE) marked as AE A through AE K, which were received and admitted into evidence without objection. The record closed on September 24, 2013. DOHA received the hearing transcript (Tr.) on October 2, 2013.

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to Afghanistan. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1, I-X. The facts administratively noticed are limited to matters of general knowledge and to matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 51 years old, works as a linguist for a DOD contractor. He began his current employment in September 2011. His current position requires him to work with U.S. military forces. He sleeps, eats, works, and lives with his military colleagues on the military base. When he leaves the base on foot patrol with his unit, he wears a full military uniform and gear, including body armor and a helmet. Applicant speaks Dari, Phasto, and English. He uses his translation and communication skills, as well as his written skills, to assist his unit members in their mission and work with the Afghan national police. Applicant acknowledged that his work is hard, dangerous, and hazardous.¹

Applicant was born and raised in Afghanistan. He graduated from high school in Afghanistan. He worked briefly as a clerk for a petroleum and gas research office in 1982. In September 1982, he joined the local police force where he worked until 1995. He has no contacts with people from these jobs.²

¹GE 1; GE 5; Tr. 55-58.

²GE 6; Tr. 46-47, 62-66.

Applicant and his wife married in 1984 in Afghanistan. He has five daughters, ages 28, 26, 25, 23, and 21, and one son, age 22, who were born in Afghanistan. In 1995, Applicant, his wife, and his six children moved from Afghanistan to Pakistan for a better living environment. At this time, the Taliban waged war for control of the Afghanistan government, and Applicant feared for the safety of his family.³

Applicant and his family lived in Pakistan from 1995 until January 2003, when they immigrated to the United States. While living in Pakistan, Applicant operated an ice cream shop. He sold his equipment when he moved to the United States. He has no contact with anyone in Pakistan. Applicant, his wife, and his six children have become naturalized U.S. citizens.⁴

After arriving in the United States, Applicant worked in the restaurant business for almost two years. From February 2005 until August 2009, he operated his own taxi cab. He managed a meat market from August 2009 until September 2011. During this time, he also worked from July 2010 to September 2011 as a part-time role player for a DOD contractor.⁵

Since leaving Afghanistan in 1995, Applicant and his entire family returned to Afghanistan once, in 2006, to attend his oldest daughter's wedding. His wife and one daughter visited Afghanistan in 2012 to meet this daughter's fiancé, who currently resides in Afghanistan. His daughter is sponsoring her fiancé for immigration to the United States. She plans to marry and thereafter, to live in the United States.⁶

When Applicant learned that he could not hold a foreign passport as a U.S. citizen, he formally returned his Afghani passport to the Embassy of Afghanistan. The Embassy certified the return and cancellation of his Afghani passport on February 1, 2011. Applicant has an active U.S. passport, which he uses when he travels abroad.⁷

Applicant's mother is a citizen of Afghanistan and a permanent resident of the United States, living with him. She does occasionally travel to Afghanistan, and she talks with Applicant's brother and sister living in Afghanistan. His mother-in-law is a naturalized U.S. citizen, living in the United States. His father and father-in-law are deceased. Applicant has three brothers and a sister. One brother is a naturalized U.S. citizen, living in the United States. One brother and his wife are now citizens and

³GE 1; GE 5, p. 24; Tr. 47-48.

⁴AE A; Tr. 49, 67.

⁵GE 1; Tr. 49-51, 67-68.

⁶GE 1; GE 5; AE A; Tr. 38-40, 68-70.

⁷GE 5; AE B; Tr. 37-38, 61.

residents of Denmark. Applicant's remaining brother, this brother's wife, Applicant's sister, and her husband are citizens and residents of Afghanistan.⁸

Applicant's brother in Afghanistan works in real estate, renting property. His wife does not work. Applicant's sister works in child care with the United States and the United Nations in Afghanistan. Her husband owns a small pharmacy in Afghanistan. Applicant talked with his brother and sister by cell phone when he was working in Afghanistan, but he did not tell them that he was working for the United States. He has not visited with them when he is in Afghanistan. He has not spoken with his siblings or their spouses since February 2013 because his cell phone connections are not working. His mother does talk with his brother and sister. His Afghani family lives in a safe area of Afghanistan.⁹

Applicant does not own property in Afghanistan. He does own a house in the United States and has some savings in the United States. He does not have any financial interests or bank accounts in Afghanistan. He does not receive any income from nor does he owe any money to foreign businesses, persons, groups, organizations, or governments. He owes no duty to any foreign businesses, interests, government, organization, or people. Applicant never served in Afghani military nor is he willing to bear arms for the Afghan government.¹⁰

Applicant stated that his job in Afghanistan is to support the United States. If anything happens to his siblings in Afghanistan, there is nothing he can do to help them. If he learned that a family member was a member of a terrorist organization, he would report that family member to the U.S. government. He stated that membership in terrorist organizations is not good for the United States, Afghanistan, or him.¹¹

Applicant received a Certificate of Commendation from the U.S. military on May 24, 2012 for his outstanding achievement performing linguistic duties and his dedication to duty. Just prior to the hearing, he received a Letter of Appreciation from the officer-in-charge for his services in Afghanistan from February 15, 2013 through September 17, 2013 in support of Operation Enduring Freedom. The officer-in-charge described Applicant's translations as "superb" and his ability to connect and establish rapport between the U.S. military and the Afghan national police as "immeasurable". This same officer-in-charge submitted a letter of recommendation for Applicant's hearing. The September 17, 2013 letter described Applicant as a superb intellect and a person with a strong work ethic and linguistic skills. He noted that without Applicant's outstanding spoken, written, and translation skills in Dari, Phasto, and English, his 25-man advisor team would not have successfully completed its mission. Applicant built a solid rapport,

⁸GE 1-GE 5; Tr. 53-54, 69-70, 73-74.

⁹GE 2; Tr. 52-53, 71-75.

¹⁰GE 1; GE 5; Tr. 51, 66, 81-82.

¹¹Tr. 61-62, 84, 86-87.

working relationship, and friendship with the U.S. military and Afghan police and successfully navigated the Afghan culture in performing his duties. The officer-in-charge described Applicant as the best linguist with whom he has served. He would serve with Applicant in combat again. Applicant proved himself to be a reliable and responsible U.S. citizen.¹²

Applicant submitted 17 letters of recommendation from family and friends. They describe him as honest, kind, respectful, hardworking, dependable, and trustworthy. They hold him in high regard. His wife opines that Applicant sees his current job as serving the United States. One daughter testified. She described her father as honest and hardworking. He taught her to be truthful and not to lie.¹³

Afghanistan

I take administrative notice of the following adjudicative facts. Afghanistan is an Islamic Republic and emerging democracy. With the support of the United States other nations, its new government endeavors to build a new system of government and to rebuild the country's infrastructure. Its Army and police force are well trained. It continues to face significant challenges from the insurgency and terrorist organizations supported by the ousted Taliban and Al Qa'ida. Security and violence remain a serious issue. The government is not complacent about the terrorist threat, the insurgency, or security issues; rather it actively seeks to eliminate all with the assistance of the United States and NATO. The new government is working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community, has signed a "Good Neighbor" declaration with six nations bordering it, and promotes regional cooperation. The United States supports the emergence of a broad-based government in Afghanistan and has made a long-term commitment to help Afghanistan rebuild itself. Sometime ago, the leaders of both countries concluded a strategic partnership agreement committing to a long-term relationship between both countries, which was signed on May 2, 2012. Despite its differences with the United States, Afghanistan continues to seek U.S. support as it moves forward towards democracy and stability. None of the documents offered in support of the request for administrative notice indicate whether Afghanistan is an active collector of intelligence information.¹⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

¹²AE I; AE K.

¹³AE J; Tr. 31-36.

¹⁴HE 1.

disqualifying conditions and mitigating conditions, which are 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, 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.

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.

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

AG ¶ 6 expresses the security concern regarding foreign influence:

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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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

(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.

Applicant's wife, children, brother, and mother-in-law are citizens and residents of the United States. Thus, no security concern is raised by these family members. Applicant's mother is also a permanent U.S. resident, who lives with him. She travels occasionally to Afghanistan and does talk by telephone with his brother and sister, who are citizens and residents of Afghanistan. Applicant maintains a normal familial relationship with his brother and sister and their spouses in Afghanistan. He talked with his brother and sister by telephone occasionally while working in Afghanistan. He does not provide financial support to his brother or sister in Afghanistan. He visited his Afghan family once in 2006. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members who may be threatened by terrorists.

In determining if such a heightened risk exists, I must look at Applicant's relationships and contacts with his family, as well as the activities of the Government of Afghanistan and terrorist organizations within Afghanistan. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his family in Afghanistan raise a heightened risk and a security concern because the activities of terrorists organizations, particularly the Taliban. The evidence of record fails to show

that the Afghani Government targets U.S. citizens in the United States or in Afghanistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Afghani Government will seek classified information is minimal. The same cannot be said for terrorist organizations.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Afghanistan cause security concerns, I considered that Afghanistan and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the Afghani Government targets U.S. citizens for protected information, but the terrorist threat is real. The human rights issues continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family in Afghanistan. Applicant's contacts with his family raise a heightened risk under AG ¶¶ 7(a) and 7(d).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and the following are potentially applicable:

(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 a normal relationship with his sister, his brother, and their spouses. His family members in Afghanistan do not know that he works as an interpreter and linguist for a DOD contractor. Because of technical problems with cell phone connections in Afghanistan, he has not spoken with Afghan family members since February 2013. His communications with his family in Afghanistan are limited and create little likelihood for foreign influence or exploitation. His brother, sister-in-law and brother-in-law do not work for the Afghan government, and they do not have any contact with government officials. His sister works with the United States and the United Nations on child care issues. It is unlikely that the Government of Afghanistan would target them to pressure Applicant for classified information, and thus, Applicant would not be placed in a position of having to choose between the interests of Afghanistan and the interests of the United States. Applicant views his job as supporting the United States. He has

indicated that he would place the interests of the United States over his family should they be targeted by terrorists or others who seek to obtain classified information from him when he testified that he cannot help his family members in Afghanistan if anything happens to them and that if he learned that a family member was supporting a terrorist organization, he would report that person to the U.S. government. Outside of his family, his ties to Afghanistan are nonexistent as Applicant does not own property, bank accounts, or other assets in Afghanistan. He does not receive any benefits from Afghanistan. His contacts in Afghanistan do not show that he would chose the interests of Afghanistan over the interests of the United States. In reviewing all the evidence of record, there is little likelihood that Applicant's family in Afghanistan are a security risk. Applicant has mitigated the security concerns about his family in Afghanistan under AG ¶¶ 8(a) and 8(b).

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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Eighteen years ago, Applicant moved his family from Afghanistan to Pakistan because his family was not safe with the fighting between the Taliban and government forces. Less than

eight years later, Applicant and his family immigrated to the United States. All have become U.S. citizens. Applicant has worked since arriving in the United States. His children work and attend school. He and his family have no plans to return to Afghanistan. As soon as he learned that he could not maintain his Afghani passport as a U.S. citizen, he returned the passport to the Afghan embassy and requested that it be destroyed. He travels only on his U.S. passport.

Applicant never served in the Afghan Army. However, in undertaking his current linguist job, he has regularly placed himself in harms way to support the U.S. military missions in Afghanistan. He participated in routine military patrols into dangerous areas so that he could act as the cultural and language interpreter for the U.S. military. His officer-in-charge highly praised his language and communication skills, as well as his people skills, which contributed significantly to their mission success. His officer-in-charge would serve with him in a combat zone again. The U.S. military highly respects him, and the work he has done for the United States in Afghanistan.¹⁵

Applicant would report any family member involved with a terrorist organization to the U.S. government. In his view, such an involvement is not beneficial to the United States, Afghanistan, or him. His family members live quietly and in a safe area of Afghanistan. They are not involved with the Afghan government and are not aware that he works as an interpreter in Afghanistan. In considering all the evidence of record, I find that he would place the interests of the United States over the interests of his family in Afghanistan if there were any threats.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his Foreign Influence under Guideline B.

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

¹⁵See ISCR Case No. 06-25928 (App. Bd. Apr. 9, 2008).

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.

MARY E. HENRY
Administrative Judge