



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-02141
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the financial considerations and personal conduct concerns, but failed to mitigate the foreign influence concerns arising from his family members residing in Afghanistan. Clearance is denied.

Statement of the Case

On December 7, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging the security concerns under Guideline B (Foreign Influence), Guideline F (Financial Considerations), and Guideline E (Personal Conduct). On December 27, 2012, Applicant answered the SOR and requested a hearing.

On February 4, 2013, Department Counsel indicated it was ready to proceed with a hearing in this matter. Scheduling of the hearing was delayed because Applicant was working overseas and due to the lack of suitable video teleconference capability. Furthermore, budgetary constraints temporarily prevented travel to conduct hearings. On July 2, 2013, a notice of hearing was issued scheduling Applicant's hearing for July 30, 2013, which coincided with his return to the United States.

The hearing was held as scheduled. Department Counsel offered exhibits (Gx.) 1 through 8. Gx. 1 through 6 were admitted into evidence without objection. I overruled Applicant's objections to Gx. 7 and 8 (credit reports), and admitted said exhibits. Department Counsel also offered a proposed summary of administrative facts regarding Afghanistan taken from official, unclassified U.S. Government documents. The Government's proposed summary was marked Gx. 9 for identification, but was not admitted into evidence. The source documents were marked as exhibits (Exh.) I – IX and, without objection, were considered for administrative notice. The relevant facts for administrative notice regarding Afghanistan are set forth below.

Applicant testified and offered exhibits (Ax.) A through F, which were admitted into evidence without objection. Applicant requested additional time post-hearing to submit documents. I granted his request and he timely submitted Ax. G through J, which were also admitted without objection. The hearing transcript (Tr.) was received on August 7, 2013, and the record closed on August 23, 2013.¹

Findings of Fact²

Applicant is in his late forties or early fifties. He was born in Afghanistan and immigrated to the United States in 1987. He earned a civil engineering degree in Afghanistan prior to immigrating to the United States. He was naturalized as a U.S. citizen in 2001. (Tr. at 39, 56; Gx. 1, Gx. 3; Ax. A – B)

In 2011, Applicant heard of an opportunity to work as a linguist for a U.S. defense contractor in Afghanistan. He applied for the position because he wanted to work in "his country." (Gx. 5 at 8) After going through a counter-intelligence background check, he was hired by the defense contractor and has worked as a linguist for the U.S. Government in Afghanistan for the past two years. Several individuals who have worked with Applicant in Afghanistan provided reference letters extolling his reliability and excellent work on behalf of the U.S. mission in Afghanistan. (Tr. at 59-63; Ax. A – B)

Applicant's mother, wife, and children are citizens and residents of Afghanistan. Applicant lived with his family and worked in Afghanistan for about two and a half years prior to starting his current job. He speaks with them frequently and is their sole source of financial support. In order to protect his family, Applicant has not told them that he is working for the U.S. Government and recently moved his family to a safer location within Afghanistan. Additionally, he testified that in the entire time he has worked for his current employer in Afghanistan he has not visited his family. He has hired an attorney to facilitate his family's future move to the United States. (Tr. at 42-46, 53-54, 58-59; Gx. 1, Gx. 3 – 4; Ax. H, Ax. J)

¹ Also at hearing, the SOR was amended without objection to correct minor typographical matters and to include the ISCR case number. (Tr. at 15-17)

² I have generalized the facts to further protect Applicant's privacy.

Applicant has two brothers and one sister who are foreign citizens. One of Applicant's brothers and his sister are resident-citizens of Afghanistan. His contact with them is quite limited and he does not provide them financial support. His brother and his sister's husband own their own business in Afghanistan. Applicant's other brother is a resident-citizen of a European Union (EU) country. Applicant's contact with this brother is also quite limited. None of Applicant's siblings are connected to the Afghan government or other foreign entity. (Tr. at 46-51; Gx. 4)

Applicant's wife has several brothers and sisters who are resident-citizens of Afghanistan. They or their spouses own their own businesses in Afghanistan, and have no connection to the Afghan government or other foreign entity. One of his wife's sisters and his brother-in-law are U.S. citizens, and Applicant is quite close to them. (Tr. at 51-54)³

When Applicant applied for his current position in 2011 he was made aware of a number of delinquent debts totaling less than \$10,000 that appeared on his credit report. Applicant was not aware of these debts when he submitted his security clearance application (SCA). He disputes the validity of these debts because he paid all his bills prior to moving to Afghanistan in 2009. He recently hired a U.S.-based debt resolution company to resolve the debts appearing on his credit report and listed on the SOR. He has been successful in disputing several of these debts and the Government concedes a number of the entries are duplicates. As for those debts that are eventually determined to be his, Applicant has the financial means and is willing to pay them. He submitted documentary proof of payment of one of the disputed debts with his post-hearing submission. (Tr. at 63-71; Gx. 3 – 5, Gx. 7; Ax. C – I)

Following the September 11 attacks, U.S. and coalition forces liberated Afghanistan from the terror imposed by the Taliban and its terrorist allies. (Exh I at 5) "Afghanistan has made significant progress since the Taliban were deposed in 2001, but still faces daunting challenges, including fighting an insurgency, preventing the return or resurgence of al-Qaida, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic, and political infrastructure." (Exh II at 1) The U.S. State Department warns that "the security threat to all U.S. citizens in Afghanistan remains critical." (Exh VI at 1) The State Department further warns that:

No part of Afghanistan is immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other Western nationals at any time. Remnants of the former Taliban regime and the al-Qaida terrorist network, as well as other groups hostile to International Security Assistance Force (ISAF) military operations, remain active. Afghan authorities have limited ability to maintain order and ensure the security of Afghan citizens and foreign visitors. (*Id.*)

³ Applicant's wife's siblings were not alleged as a concern in the SOR, and these familial connections are only being considered in assessing Applicant's mitigation case.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

In resolving the ultimate question regarding an applicant’s eligibility for a security clearance, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Furthermore, “[s]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.⁴

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

⁴ Moreover, the Appeal Board has stated that “[o]nce a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

Analysis

Guideline B, Foreign Influence

The foreign influence concern is set forth at 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.

An individual's familial ties to a foreign country can raise the foreign influence concern. However, there is no *per se* rule against applicants who have such ties. Instead, in assessing the likelihood that an applicant's family members are vulnerable to coercion, an administrative judge must consider the foreign government involved; the intelligence gathering history of that government; the country's human rights record; and the presence of terrorist activity in that country.⁵

Applicant's immediate family members (mother, wife, and children) in Afghanistan, coupled with the uncertain security environment in Afghanistan, raise the foreign influence concern.⁶ These foreign connections also establish the following disqualifying conditions under 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 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.

⁵ ISCR Case No. 11-06619 at 2 (App. Bd. May 2, 2013).

⁶ Applicant mitigated the security concern raised by his connections to his siblings because their familial bonds are not close and, as to his brother from an EU country, such familial connection does not raise a foreign influence concern. Accordingly, SOR ¶¶ 1.i – 1.k are decided in Applicant's favor.

Applicant's foreign connection to Afghanistan does not end the foreign influence analysis. AG ¶ 8 sets forth a number of conditions that could mitigate the security concern and the following were potentially raised by the evidence:

(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 immigrated to the United States over 25 years ago and has been working as a defense contractor in Afghanistan for the past two years. He has taken a number of steps to minimize the risk to his family. However, his family's presence in Afghanistan raises a significant security concern because of the realistic danger that they can be used by hostile forces within Afghanistan to influence or manipulate him. Notwithstanding his deep and longstanding relationships to the United States and his attempts to shield his family from the danger posed by his work for the U.S. Government in Afghanistan, the foreign influence concern is not mitigated. Applicant's family remains particularly vulnerable to the threat posed by the Taliban and other extremist elements operating within Afghanistan.⁷ AG ¶¶ 8(a) and (b) do not apply. At the same time, this finding is *not* a comment on Applicant's patriotism and loyalty but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member.⁸

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially

⁷ See ISCR Case No. 09-08099 (App. Bd. Sep. 14, 2012) (Despite his deep and longstanding relationships in the United States, applicant failed to mitigate the foreign influence concern arising from his family in Afghanistan). See *also* ISCR Case No. 12-09329 (App. Bd. Mar. 18, 2013) (same).

⁸ ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's past credit report, Gx. 7, implicates the Guideline F concern and specifically the disqualifying conditions listed at AG ¶¶ 19 (a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant mitigated the security concerns implicated by the delinquent debts appearing on his past credit report. Although he did not quickly address his debts once he was made aware of them, the delay was understandable as it was due to his service overseas as a defense contractor. He has now engaged the services of a debt resolution company and has resolved a number of the debts at issue. As for those debts that remain, Applicant has the financial means to pay them and, more importantly, a demonstrated track record of debt resolution. Accordingly, SOR ¶¶ 2.a – 2.n are decided for Applicant because the record evidence establishes the following mitigating conditions under AG ¶ 20:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Guideline E, Personal Conduct

The personal conduct concern is set forth at 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.

Applicant's omission of the delinquent debts on his SCA implicates the above concern and notably the following disqualifying condition under AG ¶ 16:

(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.

The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA and continues throughout the security clearance process. An applicant should disclose any potential derogatory information. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.⁹

Applicant did not deliberately fail to disclose his delinquent debts because he was not aware of the debts when he submitted his SCA. He had moved overseas in 2009 and when he returned to the United States was unaware that several creditors had reported bad debts in his name to the credit bureaus. He subsequently hired a debt resolution company that successfully challenged several of the debts. Furthermore, several of the debts appearing on his credit report are duplicates. Therefore, SOR ¶ 3.a is decided in Applicant's favor.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁰ I specifically considered Applicant's service as a defense contractor in support of the U.S. mission in Afghanistan. However, after weighing the disqualifying and mitigating conditions, and evaluating all the evidence in the context of the whole person, I conclude Applicant did not mitigate the risk that adverse foreign influence could be brought to bear upon him through his family in Afghanistan. AG ¶ 2(a)(8).

⁹ See generally ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005); ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003).

¹⁰ The non-exhaustive list of adjudicative factors are: (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.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 1.a - 1.h:	Against Applicant
Subparagraphs 1.i – 1.k:	For Applicant
Paragraph 2, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 2.a – 2.n:	For Applicant
Paragraph 3, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge