



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



In the matter of:

)
)
) ISCR Case No. 14-02105
)
)
)

Applicant for Security Clearance

Appearances

For Government, Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro Se*

04/23/2015

Decision

MASON, Paul J., Administrative Judge:

Applicants' evidence in mitigation is insufficient to overcome the security concerns raised under the foreign influence guideline. Eligibility for access to classified information is denied.

Statements of the Case

Applicants signed and certified his Electronic Questionnaires for Investigations Processing (e-QIP) on October 23, 2013. (Item 4) On November 4, 2013, he was interviewed by an investigator from the Office of Personnel Management (OPM) (Item 6). On July 18, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline (Guideline B). (Item 1) The action was taken pursuant to 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 submitted his answer to the SOR on August 21, 2014. He chose to have his case

decided on the administrative record. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on December 23, 2014. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He received the FORM on January 9, 2015. Applicant furnished a response to the FORM on January 9, 2015. (Item 11) Department Counsel had no objection to the response to the FORM. (Item 12) The case was assigned to me on February 5, 2015.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Afghanistan. (GE 3) Administratively noticed facts are limited to those that are obvious to the average person, easily verifiable, and relevant to this case.

Findings of Fact

The SOR lists seven allegations under foreign influence (Guideline B). The allegations identify his mother, father, wife, son, three sisters, and three brothers as citizens and residents of Afghanistan. The final allegation indicates that since 2009, he sent about \$30,000 to family members in Afghanistan. Applicant admitted all allegations. His wife and son are now residents of the United States.

Applicant was born in Afghanistan in August 1985. He is 29 years old. He has been married since April 2008. His son was born in Afghanistan in January 2011. Applicant seeks a security clearance to work in a Category II linguist position with a defense contractor. (Item 4)

In 1996 or 1997, Applicant and his family moved to Pakistan to flee the Taliban. After the Afghan government and U.S. Army defeated the Taliban in 2001, Applicant and his family returned to Afghanistan. He came to the United States in May 2008 on a special immigrant visa (SIV) because he worked with the U.S. Army as a local interpreter for more than a year. He applied for the SIV with the assistance of a retired U.S. Army colonel, who was working as a mentor for Afghan military forces. The SIV was issued to linguists to save their lives so they could leave Afghanistan. As a result of the SIV, Applicant became a permanent U.S. resident when he entered this country in May 2008. He was naturalized as a U.S. citizen in July 2013. (Items 4 and 6)

Four Counterintelligence (CI) screening questionnaires (provided by the U.S. Army) track Applicant's travel between the United States and Afghanistan for work or to visit family after entering the United States in May 2008.¹ The CI screening questionnaires and his OPM interview show that he has spent significant amounts of time in both countries. In his OPM interview, he acknowledged that between March 2009 and September 2013, he traveled to Afghanistan on seven occasions to visit his

¹ One CI screening questionnaire was completed in 2008, two in 2011, and one in October 2013.

family, with the trips lasting from six to ten days to about six months. He has held at least two linguist positions and several U.S. jobs, including a human relations manager and a few retail sales positions. (Items 4, 5, 7, 8, and 9)

Applicant's e-QIP and his November 2013 OPM interview confirm that in July 2014, the date of the SOR, his immediate family members were citizens and residents of Afghanistan. His contact with his 49-year-old mother, a housewife who has never worked, was weekly by telephone. Applicant's contact with his 51-year-old father, an owner of a clothing store, was once a month by telephone. His father was a major with the Afghan National Army before retiring almost 30 years ago. He has had no connection with the Afghan government since then. As noted earlier, Applicant's wife and son are now residents of the United States. Applicant's contact with his three brothers, who are unemployed students, and three sisters, who are students, is monthly to quarterly by telephone. His last face-to-face contact with his immediate family members was in September 2013. (Answer to SOR; Items 4, 6, 7)

At some time in 2009, Applicant sent \$10,000 to pay for his mother's kidney surgery and hospitalization. In 2013, Applicant sent \$20,000 to pay for his wife's stomach surgery. An unknown portion of the money was also used for his sibling's school expenses. On each occasion, the money was transferred electronically from Applicant's bank account to his father's account. The \$30,000 was money that Applicant had saved from his previous employment as a linguist or a role player for defense contractors. Very little information was furnished about his linguist positions, and no additional information was provided about his role-playing employment. (Answer to SOR; Items 5, 6)

According to his November 2013 OPM interview, CI interviews, and his response to the FORM, Applicant stressed his loyalty to the United States and wants to have a regular life in this country like everybody else. Applicant never provided financial support to any organization that sought to harm the United States. He has always complied with security regulations and procedures. Neither he nor his family members have ever endorsed violence to achieve their goals. Applicant could think of no situation where he would betray the United States. He supports U.S. military missions to wipe out the enemies of Afghanistan. (Items 4, 6, 7) Applicant provided no character evidence.

Administrative Notice

The Islamic Republic of Afghanistan became an independent country when the British relinquished control in 1919. A monarchy ruled the country until 1973 when it was overthrown in a military takeover. A Marxist government was installed in 1978 and the Soviet Union invaded the country in 1979. After the Soviet Union withdrew in 1989, the country descended into civil war, providing an opportunity for the Taliban, and their extreme interpretation of Islamic law, to establish a government in the 1990s. They provided refuge for Osama Bin-Laden and other terrorist organizations.

Following September 11, 2001, the Taliban refused to expel Bin-Laden from Afghanistan. The United States and a coalition of countries forced the Taliban out of the country on November 1, 2001. Though a new democratic government was installed in 2004, terrorist and insurgent organizations, including al Qaida and a rejuvenated Taliban continually conducted attacks against U.S. and Afghan interests, institutions, and citizens, to destabilize the government of Afghanistan. The United States Department of State has warned that the entire country of Afghanistan is a security threat to American citizens. The Afghan government also faces other ongoing challenges such as systemic government corruption and criminal activity funded by the drug trade, which is difficult to prosecute.

The most serious human rights problems in 2013 were torture and abuse of detainees. Other human rights problems that continue to plague the country are extrajudicial killing, torture and other abuse, poor prison conditions, widespread official misconduct, ineffective government investigations of local security forces, limits of freedom of assembly, restrictions of privacy rights, abuse of worker rights, and restrictions on religious freedoms.

In September 2014, the State Department renewed a warning to U.S citizens against travel to Afghanistan. The security situation in Afghanistan remains unstable and no province in the country should be considered safe from intentional or random acts of criminality against U.S and other foreign nationals at any time.

Policies

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 useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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.

Analysis

Foreign Influence

AG ¶ 6 expresses the security concern of the foreign influence guideline:

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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains two conditions that may be applicable in this case:

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

AG ¶ 7(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 individual's desire to help a foreign person, group, or country by providing that information.

The mere possession of close ties and contacts with a family member is not disqualifying under Guideline B. On the other hand, if an applicant has contacts with a relative or friend living in a foreign country like Afghanistan, this single factor may create a potential for foreign influence that is disqualifying under the guideline. These contacts potentially expose an applicant to a heightened risk of foreign exploitation by Afghan or international criminals, insurgents, or terrorists. Given Afghanistan's lack of security throughout the country, and poor human rights record, Applicant's parents, brothers, and sisters, could be vulnerable to pressure or coercion that may expose Applicant to a heightened risk of foreign exploitation. His connections to his immediate family members creates a potential conflict of interest. The immigration of Applicant's wife and son to the United States between August 2014 and January 2015, reduces the heightened risk of foreign influence for these two individuals. AG ¶¶ 7(a) and 7(b). apply.

Because of Applicant's close ties and contacts to the country, combined with Afghanistan's poor human rights and country-wide problem with terrorism, he has a

burden of presenting sufficient evidence under AG ¶¶ 8(a), 8(b), and 8(c), to demonstrate that he is unlikely to be placed in a position of having to choose between his immediate family members and U.S. interests. The conditions are:

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.;

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 minimal, or the individual has such deep and long-lasting 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

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.

Applicant's contacts with his immediate family members are not casual or infrequent. His parents, three brothers, and four sisters are citizens and residents of Afghanistan. He traveled to the country seven times between March 2009 and September 2013, sometimes spending up to six months. Since 2009, he provided \$30,000 for his family's medical and educational expenses in Afghanistan. Based on his regular and immediate family contacts in Afghanistan, and the unstable security situation in the country, Applicant could be placed in a position of having to choose between interests of his family members and his U.S. interests. AG ¶¶ 8(a) and 8(c) do not apply.

Applicant entered the United States in May 2008 on an SIV that granted him a permanent resident status. He was naturalized as a U.S. citizen in July 2013. However, I find his sense of loyalty to his immediate family members in Afghanistan is not minimal, especially when only two of Applicant's immediate family members are citizens and residents of the United States. I am unable to conclude that he can be expected to decide all conflicts of interest in favor of U.S. interests. In sum, AG ¶ 8(b) does not apply.

The record shows that since 2005, Applicant has been a linguist for three contractors supporting the U.S. Army. Applicant indicated he was granted an SIV in May 2008 because he had worked as a linguist for more than a year. The SIV was issued to linguists so they could leave Afghanistan to save their lives. Other than his reference to the dangers of his Afghan position that led to his entry to the United States in May 2008, the perils Applicant has faced since then as a linguist are unknown. Applicant has failed to establish by credible and independent evidence that his compliance with security

regulations made a significant contribution to the national security and that he can be expected to resolve any conflict in favor of the United States. (See, ISCR Case No. 06-25928 at 4 (App. Bd. Apr. 9. 2008))

Whole-Person Concept

Applicant's eligibility for a security clearance must also be evaluated in the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 the participation was 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.

Applicant has been married since 2008. His wife and four-year-old child recently moved to the United States in the last five months. There is no character evidence from Applicant's employer or the U.S. Army that sheds light on the dangers that Applicant may have faced as a linguist and his compliance with security procedures and regulations while he carried out his job responsibilities in Afghanistan. Given the dearth of evidence concerning his other contacts and relationships to the United States, Applicant's evidence in mitigation is insufficient to overcome the security concerns presented under the guideline for foreign influence.

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 (Foreign Influence, Guideline B):	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.e-1.g:	Against Applicant
Subparagraphs 1.c, 1.d:	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.

Paul J. Mason
Administrative Judge