



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 14-04576
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

07/21/2016

Decision

HESS, Stephanie C., Administrative Judge:

Applicant surrendered his foreign passport and has established his strong ties to the United States. The Guideline B (Foreign Influence) and C (Foreign Preference) allegations are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on March 21, 2014. On November 25, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines B and C. The DOD acted 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 DOD on September 1, 2006.

Applicant received the SOR and answered it on December 22, 2014, requesting a decision on the record without a hearing. Department Counsel submitted the Government's written case on January 13, 2016, and a complete copy of the file of

relevant material (FORM,) which included Government Exhibits (GX) 1 through 11, was sent to Applicant on January 15, 2016. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on February 7, 2016, and filed a Response, which included a statement with several attachments. Department Counsel made no objections to Applicant's Response. I have admitted the Response as Applicant's Exhibit (AX) 1. The case was assigned to me on February 23, 2016.

Administrative Notice

In the body of the FORM, Department Counsel requested that I take administrative notice of relevant facts about Afghanistan. This request was included in the body of the FORM, and excerpts of the supporting documents were attached to it. I take administrative notice of the following facts concerning Afghanistan:

Afghanistan has been an independent nation since 1919, and it was a monarchy until a military coup in 1973. Following a second military coup in 1978, a Marxist government emerged. In December 1979, the Soviet Union invaded and occupied Afghanistan, but they were resisted by the Afghan mujahedeen. The Soviet Union withdrew in February 1989 pursuant to an agreement signed by Pakistan, Afghanistan, the United States, and the Soviet Union. The mujahedeen were not a party to the agreement and refused to abide by it. The result was a civil war among several factions, including the Taliban. By the end of 1998, the Taliban controlled most of Afghanistan, committed atrocities against minority populations, and provided sanctuary to terrorist organizations. U.S. military forces, along with forces from a coalition partnership, forced the Taliban out of power by November 2001.¹

Afghanistan has made noted progress since the Taliban was disposed in 2001, but continues to face challenges, which include, fighting insurgency, preventing the return of terrorist organizations, rebuilding its decimated infrastructure, and recovering from more than three decades of war. The United States has made a long-term commitment to help Afghanistan build a secure state with a democratic government that respects human rights, and with the assistance and support of the United States, a new democratic government took office in 2004. The United States continues its mission in partnership with Afghan security forces to combat violence and terrorism against the people and the government.

Internal problems following the years of war and ongoing insurgent and extremist groups continue to threaten the country's governmental and overall stability. Insurgent groups continue to attempt to inspire Afghan security personnel to commit insider attacks against international coalition members. The United States has delayed its reduction of U.S. forces in an effort to help Afghanistan stabilize.

¹ I have *sua sponte* taken administrative notice of facts from documents not included in Department Counsel's administrative notice submission. These facts are from: Central Intelligence Agency, *The World Factbook: Afghanistan*, updated July 12, 2016, and U.S. Department of State, *U.S. Relations With Afghanistan*, October 29, 2015. I have appended these documents to the record as Administrative Exhibits 1 and 2.

Afghanistan continues to have a poor human rights record. There are reports of widespread torture, rape, and other abuses by officials, security forces, detention center authorities, and police, as well as indiscriminate attacks on civilians, insurgents killing people associated with the Afghan government, targeted violence against women and girls, and human trafficking. These offenses are not effectively investigated by local authorities. Additionally, the judicial system suffers from corruption.

A U.S. Department of State travel warning for Afghanistan remains in effect. The security situation is extremely unstable, and the possibility of violence against U.S. and other foreign nationals remains high. Extremist groups are active throughout the country, and the Afghanistan-Pakistan border remains a safe haven for them. There is an ongoing risk of kidnapping and hostage-taking.

Additionally, I *sua sponte* take administrative notice of the following relevant facts: In 2008, a Special Immigrant Visa (SIV) could be issued to Afghan nationals who: were employed in Afghanistan for a period of at least 12 months serving the U.S. Armed Forces, or under the authority of the Chief of Mission; obtained a written recommendation from the Chief of Mission or a general or flag officer in the chain of command of the U.S. military unit supported by the translator or interpreter; and, cleared the requisite background check and screening. Persons entering the United States on such SIVs are admitted as permanent residents.²

Findings of Fact

The SOR alleges under Guideline C, and Applicant denies, that he possesses a valid Afghanistan passport. Under Guideline B, the SOR alleges, and Applicant denies, that his wife is a citizen of Afghanistan. The SOR also alleges that Applicant's parents, in-laws, brother, and two sisters are citizens and residents of Afghanistan; that his father worked for the Afghan ministry of commerce since 1975 as a trade attaché; and, that Applicant's father-in-law worked as a maintenance officer for the Afghan presidential palace. In his Answer, Applicant admitted each of these allegations, and offered information about his family members and his contact with them. His admissions are incorporated in my findings of fact.

Applicant is a 39-year-old linguist and cultural advisor. He is employed by a defense contractor, and has been working in Afghanistan with the U.S. military and coalition forces since November 2012. He worked for another defense contractor as a translator from May 2011 until November 2012, and for the U.S. Army as a medical interpreter in Afghanistan from July 2007 until August 2008. (GX 4.)

Applicant was born in Afghanistan. He graduated from high school in 1995, and attended medical school in Afghanistan from 1996 until 2003, when he graduated with a medical degree. From 2006 to 2007, he worked for the Afghanistan government's public health ministry in the medical field. (GX 4; GX 8.)

² U.S. Citizenship and Immigration Services, *Expanded Special Immigrant Status for Afghan and Iraqi Translators and Interpreters*, July 2, 2007. I have appended this document to the record as Administrative Exhibit 3.

Applicant's wife worked as an interpreter for the U.S. Embassy, in Kabul, Afghanistan, for approximately two years. Applicant and his wife's work with U.S. government entities entitled them to apply for special immigrant visas, which were granted. He and his wife were admitted to the United States in August 2008 as permanent residents. He became a naturalized U.S. citizen in January 2014, and his wife was granted citizenship in September 2013. They have two children who are U.S. citizens by birth. Applicant's wife worked as an interpreter for the U.S. Army after immigrating to the United States. Neither Applicant nor his wife has any property or financial interests in Afghanistan. (GX 4; GX 8; Answer.)

Applicant has two brothers and one sister who are citizens and residents of Afghanistan. His brother is deputy director of a private university. His older sister is married and does not work outside the home. His younger sister is a student. He has weekly contact with his brother and younger sister, and monthly contact with his older sister, wherein their "conversations are general in nature and about family matters." (GX 4; Answer; GX 11.)

Applicant sponsored his parents, and Applicant's wife sponsored her parents, to immigrate to the United States. They received their visas in February 2016, and moved permanently to the United States in March 2016, with the intention of becoming citizens. Applicant's father retired from the Afghan ministry of commerce in 2012. His father-in-law also retired. (AX 1; GX 4.)

Applicant applied for a linguist position in 2009. He was interviewed for the position and a counterintelligence (CI) screening questionnaire was completed from his interview answers on January 15, 2009. The screeners' assessment was, "No evidence is present that indicates this candidate is a security risk." (GX 8.) Applicant underwent another CI screening in May 2011, where the screeners reached the same conclusion. (GX 9.) He underwent a third CI screening in November 2012, where his screeners concluded that, due to his contacts with his father and father-in-law, who were then employed by the Afghanistan government, "This candidate has the potential to present a security risk." (GX 10.)

Applicant applied for his current linguist job prior to becoming a U.S. citizen. At the advice of his employment recruiter, he attempted to extend the date of validity of his Afghanistan passport by sending it to the consulate in Los Angeles, CA. Apparently, this was not the proper procedure, and his original passport was not returned to him. Applicant was ultimately advised by the consulate to apply for a new Afghanistan passport. The new passport was issued in September 2012. Applicant surrendered this passport to his facility security officer on February 23, 2014, and signed an affidavit agreeing to its destruction. On that same day, he sent a memorandum to the consulate renouncing his Afghanistan citizenship. The facility security officer signed an affidavit on March 13, 2014, wherein she stated that the employer would destroy the passport, and would report any requests by Applicant for return of the passport. (Answer; AX 1.)

Applicant provided two letters of reference with his Response. According to the linguist manager where Applicant is currently assigned, Applicant's work in Afghanistan has played a vital role in the mission, he is respected by his peers, and he demonstrates a high degree of integrity and responsibility. Applicant's security manager states that Applicant's contributions have been exemplary, and that Applicant "has shown numerous times that his loyalty lies with the United States of America." Applicant also provided a copy of a certificate of appreciation he received for his contributions to Operation Enduring Freedom between November 2012 and January 2013. Applicant states, "On the day that I became a naturalized citizen of the United States, I raised my hand to support, honor, and serve America...I know where my loyalties lie and that is with the United States." (AX 1.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

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." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant

from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9, the concern involving foreign preference arises “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States.” Specifically, Applicant’s possession of a foreign passport raises this concern and establishes the disqualifying condition at AG ¶ 10(a), “exercise of any right, privilege or obligation of foreign citizenship,” to include “possession of a current foreign passport.”

The foreign influence concern sets forth a number of conditions that could mitigate the concern. The following mitigating conditions are potentially relevant:

AG ¶ 11(b): the individual has expressed a willingness to renounce dual citizenship;

AG ¶ 11(c): exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

AG ¶ 11(e): the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant obtained his foreign passport in 2012 before becoming a U.S. citizen. He surrendered it to his facility security officer to be destroyed one month after

becoming a citizen, and on the same day he renounced his Afghanistan citizenship. Applicant has mitigated the Guideline C concern.

Guideline B, Foreign Influence

The foreign influence security concern is explained 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. Two disqualifying conditions under this guideline are relevant to 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;

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 the individual's desire to help a foreign person, group, or country by providing that information.

When foreign family ties are involved, the totality of an applicant's family ties to a foreign country, as well as each individual family tie, must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

The instability of the Afghan government, the pervasive threats from insurgent and extremist groups, and the government's poor human rights record are sufficient to establish the heightened risk required by AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b). These two disqualifying conditions are established.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Three mitigating conditions under this guideline are potentially relevant:

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;

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; 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.

AG ¶ 8(a) is not established, for the reasons set out in the above discussion of AG ¶ 7(a). AG ¶ 8(c) is not established. Applicant’s contacts with his siblings are frequent and, by their nature, not casual.

AG ¶ 8(b) is established. Applicant has demonstrated his undivided loyalty and his ties to the United States, and would resolve any potential conflict of interest that could arise from his relationships with his siblings in Afghanistan, in favor of U.S. interests. Specifically, Applicant and his wife came to the United States in 2008 on special immigrant visas, which gave them permanent resident status. They qualified for these visas because of their work in support of the U.S. military, favorable recommendations from either the Chief of Mission or the general or flag officer in the

chain of command of the units they supported, and, clear background checks and screenings. Applicant's wife became a U.S. citizen in September 2013. Applicant became a citizen in January 2014, and in February 2014, he surrendered his passport and renounced his Afghanistan citizenship. Their two children were born in the United States. The concern raised in the 2012 CI screening was due to Applicant's contacts with his father and father-in-law, who were Afghanistan government employees. However, his parents and in-laws are now U.S. residents, and the concern is moot.

Applicant began working in support of the U.S. mission in Afghanistan in 2007. He continues to work in support of this mission, despite the potentially increased danger to him as a U.S. citizen in Afghanistan. In his current position, he is respected by his superiors and peers, who consider him to be loyal to the United States, and a responsible person with a high degree of integrity. His contributions are considered vital to the mission. Applicant's ties to his family in the United States, including his parents and in-laws, and his ongoing commitment to supporting the U.S. mission in Afghanistan outweigh his ties to his family in Afghanistan.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but I have also considered the following:

Applicant's ongoing efforts and dedication in support of the U.S. mission in Afghanistan are commendable. Applicant's parents and in-laws are now U.S. residents, and aspire to become citizens. Applicant renounced his Afghanistan citizenship. These actions demonstrate his loyalty and ties to the United States.

After weighing the disqualifying and mitigating conditions under Guidelines C and B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his previous possession of a valid foreign passport, and by his family ties to Afghanistan. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraph 1.a	For Applicant
Paragraph 2, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 2.a – 2.f	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge