



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



In the matter of:)
)
) ISCR Case No. 14-06747
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

07/26/2016

Decision

DAM, Shari, Administrative Judge:

Applicant was born in Afghanistan. He spent his early years there and then attended school in the Soviet Union. He came to the United States in 2001 and became a citizen in 2008. He has served as a linguist for the U.S. Army since 2009. Applicant mitigated the security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

On March 10, 2014, Applicant submitted a security clearance application (SF-86). On July 1, 2015, the Department of Defense (DoD) issued to him a Statement of Reasons (SOR), alleging 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 (AG) effective after September 1, 2006.

Applicant answered the SOR in writing on July 21, 2015 (Answer), and requested a hearing before an administrative judge. On October 22, 2015, the case was assigned to another administrative judge. It was re-assigned to me on March 1, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March

10, 2016, and I convened the hearing as scheduled on April 6, 2016. The Government offered Exhibits (GE) 1 through 6. GE 1, GE 2, GE 4, GE 5, and GE 6 were admitted without an objection. Appellant objected to the admissibility of GE 3; I overruled the objection, and GE 3 was admitted. (Tr. 10.)

Applicant offered 15 exhibits (AE) into evidence. AE A through AE G were attached to his Answer. At the hearing AE A through AE O were admitted into evidence without objection. Applicant also offered AE P and AE Q. AE P is addressed in the paragraph below. (Tr. 14.) AE Q is a copy of Applicant's March 2014 SCA with highlighted changes or corrections made on it. Both documents were identified, but not admitted into evidence because Department Counsel had not received them prior to the hearing. She was given until April 28, 2016, to review said exhibits and file objections. Appellant was given until May 6, 2016, to reply to any objections. (Tr. 14-15, 100.) On April 27, 2016, Department Counsel stated via email that she had no objection to AE Q, and it was admitted into the record. I marked her email as Hearing Exhibit (HE) 2. DOHA received the transcript (Tr.) on April 13, 2016.

Procedural Ruling

Department Counsel requested that I take administrative notice of certain facts relating to Afghanistan (HE 1). She provided six supporting exhibits to show detail and context for those facts (I-VI). Applicant did not object to the request or documents, and Department Counsel's request was granted. (Tr. 11.) Applicant's AE P is his request that I take administrative notice of additional facts relating to Afghanistan. Attached to it were seven exhibits (I-VII). Department Counsel had no objection to Applicant's request and AE P is admitted into the record. (HE 2.)

Findings of Fact

Applicant's admitted the allegations contained in SOR ¶¶ 1.a through 1.c with explanations. (Answer.)

Applicant was born in Afghanistan in 1973 and is 43 years old. In October 1984 the Russian government, which had invaded Afghanistan, sent Applicant to the Soviet Union for his education. He was 10 years old. He remained there until January 1995, and then moved to Pakistan where he studied engineering at a university. Some of his family members lived in Pakistan at that time, including a sister with whom he stayed.

Applicant's wife was born in Afghanistan and became a naturalized U.S. citizen in May 1996. In November 1996 his wife visited him in Pakistan and they married. In December 1999 Applicant traveled to the United Kingdom (UK) because he said his life was in danger in Pakistan. His wife later visited him in the UK. She was apparently living in the United States at that time. In September 2001 he came to the United States. He became a naturalized U.S. citizen in September 2008. He and his wife have three children, all of whom are natural-born U.S. citizens. (Tr. 23, 43, 53, 76; GE 1, GE 3.)

Applicant's parents were born in Afghanistan. His father is deceased since 2006. He was an officer in the Afghanistan army before the Soviet Union invaded the country.

He subsequently retired. (Tr. 43-44.) Applicant's mother was a citizen and resident of Afghanistan. She is deceased. Applicant has three brothers and six sisters, who are citizens and residents of Afghanistan. Two brothers work in real estate and another brother is a medical doctor. All of his sisters are housewives. His brothers-in-law, sisters-in-law, nieces and nephews, are citizens and residents of Afghanistan. None of them work for the government. His wife's parents were born in Afghanistan and are deceased. (Tr. 68-69; Answer; GE 2.) He thinks his wife has two siblings living in Afghanistan. Most of her relatives reside in the United States. (Tr. 74.)

Applicant said he does not communicate with his family. In 2006 he visited his ill father, who was in Pakistan seeking treatment. In 2010 he visited five siblings in Afghanistan while working for the U.S. Army. He received the Army's authorization and direction to do so for purposes of an Army mission. The last time he visited his family residing in Afghanistan was in 2012. He traveled there to attend one brother's wedding. He was not working for a federal contractor at the time and reported the trip to his previous employer. He stayed in a hotel for five days. Since then, he has spoken to one brother and one sister once by telephone in 2013. He stated that he does not have a close relationship with his siblings because he is the youngest of ten children and did not live in Afghanistan after leaving in 1984. He does not have contact with members of his extended family. (Tr.33-35, 66-67, 87.) He does not send money to family members living in Afghanistan, and does not own any real property or have financial interests there. He has not sponsored any family member for U.S. citizenship. He said he is loyal to the United States. (Tr. 37.)

An issue raised during this hearing involved Applicant's credibility. According to a March 2014 Counterintelligence-Focused Security Screening Questionnaires and Interview (CI Interview), Applicant told an investigator that in 1999 he paid a smuggler \$5,000 to provide him with illegal travel documents and transportation from Pakistan into the United Kingdom to gain refugee status. (GE 3.) During his testimony, he strongly denied that he told the investigator that he was "illegally smuggled" into the United Kingdom, but said that he paid money to a source to expedite his legal request for refugee status through the United Nations. (Tr. 45-47, 77.) He said he applied for a U.S. visa before leaving Pakistan in 1999. It was approved in 2001. He said this interview with the investigator was contentious. (Tr. 77-78.)

After arriving in the United States, Applicant worked for a hospital for five years. In March 2009 he obtained a linguist position with the U.S. Army and worked in Afghanistan until September 2012. He received a secret clearance in July 2010 through another government department. He was subsequently unemployed for three months before beginning another linguist position in January 2013. After working in Afghanistan for six months, he returned to the United States in June 2013, and was unemployed for four months, before beginning another linguist position in October 2013 in Afghanistan for three months. After completing that work, he was subsequently unemployed again, before starting employment with another defense contractor in September 2014 at an Army base in the United States. (GE 1, GE 3; AE G.) In October 2015 he left that position because his wife was ill. (Tr. 89.) As a linguist, he has worked with the Coalition

Forces including an ally's defense force. (Tr. 20.) He completed another SF-86 in January 2016 for an employer. (AE G.)

Applicant submitted certificates of appreciation for his competent service to the Armed Forces while serving in the Middle East. (AE A, AE B, AE C, AE D, and AE E.) His team supervisor from September 2011 through December 2011 stated that Applicant performed "exceptionally well" during that period. (AE F.) A commander of a special operations task force for whom Applicant worked from March 2009 to March 2011, stated that Applicant's work increased the success of the Coalition Forces' missions. He "highly recommended" Applicant for future positions. (AE F.) He emphasized that Applicant worked in stressful and threatening situations. (AE F.) The major who supervised Applicant from January to September 2012 wrote that Applicant's work was exceptional. (AE F.) A commander for a U.S. military force, who supervised Applicant's work during April and May 2014, said Applicant "was a consummate professional who consistently delivered quality work." (AE F.)

Afghanistan

I take administrative notice of the facts set forth in the Administrative Notice documents concerning Afghanistan, which are incorporated herein by reference. (HE I and AE P.) Of particular significance are Afghanistan's history of political unrest, and the presence of the Taliban and al-Qaeda, terrorist organizations, which continue to assert power and intimidation within the country and the bordering countries, including Pakistan. Safety and security are key issues because these terrorist organizations target United States interests in Afghanistan by suicide operations, bombings, assassinations, car-jacking, assaults, and hostage taking. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. Few sections of Afghanistan are safe or immune from violence, and the government has difficulty enforcing the rule of law. However, Afghanistan experienced its first democratic election in June 2014, and the country continues to work on developing a partnership with the United States.

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 to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for access to classified information seeks to enter 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 the 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” 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 explains the security concern pertaining to foreign influence as follows:

Foreign contacts and interest 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 conditions that could raise a security concern and may be disqualifying. The SOR allegations and evidence in this case raised potential security concerns under two foreign influence disqualifying conditions:

(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.

Applicant has three brothers, six sisters, and extended family, including in-laws, nieces, and nephews, who are resident citizens of Afghanistan. Afghanistan is a country known to have significant terrorism problems, engages in human right abuses, and therefore presents a heightened risk. Accordingly, the presence of these individuals in Afghanistan theoretically creates a heightened risk of pressure or coercion, and a potential conflict of interest that could arise from a desire to help them.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the above security concerns in this case are:

(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.;

(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

(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 relationships with his brothers, sisters, and members of his extended family have been sufficiently minimal, such that he clearly established mitigation under AG ¶¶ 8(a) and (c) with respect to those relationships. His immediate family members, wife and three children, are all U.S. citizens residing here. Additionally, Applicant came

to the United States in 2001, and has been a U.S. citizen since 2008. He has successfully served with the U.S. Armed Forces in the Middle East since 2009, as documented in letters and awards from his commands. These circumstances demonstrate that Applicant will recognize, resist, and report any attempts by terrorists or a foreign government to coerce him. Hence, AG ¶¶ 8(b) provides further mitigation of any potential security concerns raised under AG ¶¶ 7(a) or (b).

Applicant stated that he has not had communication with any sibling since 2013, at which time he spoke to two siblings. He has no contact with other family members. He previously visited his family in 2012 for a family wedding and stayed in a hotel for five days. When he saw several family members in 2010, he had received authorization from his command to do so. His contacts have been sufficiently minimal since 2009 when he began work as a linguist. AG ¶ 8(c) provides additional mitigation.

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 the Applicant's conduct and 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. I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis.

There are foreign influence security concerns arising from Applicant's history of connections to Afghanistan that weigh against granting him a security clearance. Applicant was born in Afghanistan and spent his first 10 years there. His three brothers, six sisters, and other family members are citizens and residents of Afghanistan. His wife has family members who are citizens and residents of Afghanistan. In 2012 he traveled there to attend his brother's wedding. He has had some contact with certain siblings. Those factors demonstrate an attachment to Afghanistan. His current work with the U.S. Army creates a greater risk of potential coercion, should terrorists learn of his work and family members residing in Afghanistan.

In addition to the above adverse factors, Applicant's testimony regarding the method by which he traveled to and entered the United Kingdom to seek refugee status raised a credibility issue as it was inconsistent with statements recorded in his March 2014 CI Interview. Based on his testimony regarding those facts and the absence of testimony from the investigator who performed the interview, coupled with numerous letters of formal recognition for his service with the U.S. Army Forces under sometimes dangerous conditions, questions about his credibility are found in his favor.¹

There are other factors that weigh in favor of granting Applicant a security clearance. He established strong connections to the United States, including U.S. citizenship since 2008. He has worked at various jobs in the United States prior to gaining a linguist position in 2009. His wife and children are resident citizens of the United States, as are some of his wife's relatives. Overall, the record evidence creates no question or doubt as to Applicant's present eligibility and suitability for a security clearance.

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
Subparagraphs 1.a through 1.c:	For Applicant

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.

Shari Dam
Administrative Judge

¹ See **Error! Main Document Only**. ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006).