



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06931

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel

For Applicant: *Pro se*

10/05/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On August 20, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline B (Foreign Influence). In a response dated September 7, 2015, Applicant admitted six of the eight allegations raised and requested a determination based on the written record in lieu of a hearing. On December 21, 2015, the Government prepared a file of relevant material (FORM) which included eight attachments ("Items"). Applicant timely responded to the FORM in a package dated January 9, 2016, containing four positive recommendations and multiple certificates. I was assigned the case on March 3, 2016. Based on a thorough review of the case file, I find that Applicant's materials failed to mitigate foreign influence security concerns. Clearance is denied.

Findings of Fact

Applicant is a 36-year-old male who was born and raised in Afghanistan. He began working as a linguist with various defense contractors in 2002. He has earned a certificate from an English language program, received formal training as a linguist, completed coursework in purchasing and systems acquisitions, and worked at a linguistic training center for about five years.

Applicant has several positive letters of reference, dated between 2006 and about October 2015, just prior to his January 2016 FORM response. All praise Applicant in high terms regarding his professionalism, dedication, positive attitude, linguistic abilities, and service. (FORM Response; SOR Response, Item 6) His current professional point of contact wrote that Applicant is a “great asset” to his team. (FORM Response, Recommendation of Oct. 10, 2015) Applicant has received multiple certificates of appreciation for his work on behalf of the United States military abroad, from 2006 to his tenure as a translator and cultural advisor from 2013 through 2014. (FORM Response, certificates)

In the autumn of 2007, Applicant was granted a special immigrant visa devised for linguists serving with the U.S. Armed Forces. He arrived in this country between late 2007 and early 2008, and received a green card shortly thereafter. In 2008, he married a woman from Afghanistan. The couple is now settled in the United States. They have had three children, at least one of whom was born in the United States.

Applicant moved back and forth between the United States and various defense-related assignments abroad for several years.¹ He applied for U.S. citizenship in late 2012 and became a naturalized United States citizen in 2013. Today, Applicant’s wife cares for their children while he attends to his translating duties.

At issue in the SOR is Applicant’s relationship with multiple family members and friends who are citizens and residents in Afghanistan, including his mother, three sisters, two college-age brothers, and various extended family members. In addition, his in-laws are also citizens of Afghanistan. Their current residence, however, is unaddressed. (FORM, Item 2 at 36-39)

Although Applicant’s wife is now a full-time resident of the United States in possession of a green card, she remains a citizen of Afghanistan. Their children are all citizens of the United States. Applicant maintains telephonic contact with his mother and siblings on a weekly basis, discussing their health and family-related topics. In addition, Applicant maintains contact with extended relations in Afghanistan. He does not discuss his work with any of these contacts. There is no evidence indicating whether any of these individuals or their loved ones has or has had any association with Afghanistan’s government or military.

Applicant wires monetary support to his widowed mother, a housewife. He noted that he supports his “mother twice a year for about 3 thousand dollars.” (SOR Response, narrative, at 1) About once a year, he wires each of his five siblings about \$1,000. In addition, Applicant is co-owner, along with his two uncles, of a property in Afghanistan in which his mother and brothers live.² The property is valued at

¹ FORM, Item 7, Personal Subject Interview (PSI) summary (March 2012), at 2-4.

² In 2016, Applicant stated that his “immediate family members are living in [his] share of the house.” (SOR Response, narrative, at 1). The overall record is unclear as to whether his sisters live at that

approximately \$100,000. It is a “family compound” in which he inherited his interest at birth, and in which about 20 people resided as of 2012.³ In sum, between 2008 and 2015, Applicant sent \$28,000 to his family members in Afghanistan.⁴

In accordance with Department Counsel’s request (FORM, Item 8), I have taken administrative notice that 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. With the assistance and support of the United States, a new democratic government took office in 2004. The effectiveness of the central government of Afghanistan has increased, but local governments are weak and corruption is widespread.

I also have noted that Afghanistan’s human rights record is generally poor, due to the continuing insurgency, the weak government, and ongoing recovery efforts from two decades of war. In spite of efforts by the U.S. and the government of Afghanistan, it continues to be a violent, unsafe, unstable country. The border area between Afghanistan and Pakistan remains a safe haven for insurgents and criminal groups. The weak government and internal instability have enabled hostile states, non-state actors, terrorists, and insurgents to continue operating in Afghanistan, including groups hostile to the United States. Insurgents use narcotics trafficking and kidnapping to finance their military and technical capabilities. Suicide bombing attacks continue to inflict large numbers of casualties. Insurgent groups encourage Afghan security personnel to conduct insider attacks to undermine the trust between the U.S. forces and contractors and their Afghan partners.

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

residence or if any are now married. Applicant’s two uncles are private sector shopkeepers. Little is provided regarding their own families.

³ FORM, Item 7, PSI summary (March 2012), at 1-2.

⁴ This sum includes funds sent to Applicant’s wife before she came to the United States. It is noted that the sum of \$28,000 is considerably less than cumulative sums he stated he has sent to his mother and five siblings during the time period at issue. This discrepancy is not reconciled in the case file contents.

“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 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) 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)) Security clearance determinations should err, if they must, on the side of denials. (*Egan*, 484 U.S. at 531; see AG ¶ 2(b))

Analysis

Guideline B, Foreign Influence:

Under 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 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. Here, although the democratic government of Afghanistan is working with the United States in its military efforts, internal upheavals are existent and the threat of terrorism is prevalent within its borders.

The SOR correctly alleges that Applicant's mother, siblings, and some extended family members and associates are citizens and residents of Afghanistan (SOR ¶¶ 1.b-1.d, 1.f). He maintains weekly telephonic contact with his mother and siblings. Moreover, although Applicant's wife now resides in the United States, she remains a citizen of Afghanistan with family yet remaining in Afghanistan.⁵ (SOR ¶ 1a) In addition, Applicant is co-owner of the residential property in Afghanistan, valued at approximately \$100,000, in which he provides a residence for his family members in that country; these same family members were the recipients of at least \$28,000 between 2008 and 2015. (SOR ¶¶ 1.g-1.h)

Four disqualifying conditions under this guideline are relevant: 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; AG ¶ 7(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, and AG ¶ 7(e): a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Family ties to residents or citizens of a foreign country do not *per se* disqualify an applicant from obtaining access to sensitive information; such ties are only disqualifying if they create a heightened risk of foreign exploitation or a potential conflict of interest. The country in question also must be considered. The United States has worked in concert with Afghanistan in recent years in the battle against terrorism. As previously

⁵ The evidence, however, shows Applicant's children are United States citizens living in this country.

noted, however, Afghanistan's human rights record is generally poor due to the continuing insurgency, the weak government, and ongoing recovery efforts from two decades of war. In spite of efforts by the U.S. and the government of Afghanistan, it continues to be a violent, unsafe, unstable country.

AG ¶¶ 7(a) and 7(d) require substantial evidence of a "heightened risk," which denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. When 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)) Moreover, 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)) The ineffectiveness of the Afghan government, continuing 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 7(d) and the potential conflict of interest in AG ¶ 7(b). Taken in tandem with Applicant's close ties to his family abroad, as well as his foreign real estate investment maintained on their behalf, all four disqualifying conditions noted are thus established.

The following 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 under these facts, given the considerations noted above in reference to AG ¶¶ 7(a), 7(b), and 7(d). AG ¶ 8(c) may be substantially established for Applicant's extended family members and former contacts in Afghanistan. It is not, however, established for his mother and siblings for whom he provides financial support and housing. Under these facts, it cannot be found that he has rebutted the 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)) With regard to Applicant's children, AG ¶ 8(b) is established. Although Applicant's wife is now a resident of the United States, her relationship to her own family members abroad remains unaddressed.

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). I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is mature, well-educated, and has experience in his field that is both considerable and highly valued. He has worked for defense contractors for many years, and he has served reliably, diligently, and faithfully under dangerous conditions. He qualified for a special visa due in large part to his service to the United States. Generally, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying circumstances. However, where an applicant has established by credible, independent evidence that his or her compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to the national security, such circumstances give credibility to an applicant's assertion that he or she will recognize, resist, and report a foreign power or terrorist's attempts at coercion or exploitation. In this case, Applicant has a track record of complying with security regulations and procedures in high-risk circumstances in which he made significant contributions to national security. (See ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008); ISCR Case No. 06-25928 at 4 (App. Bd. Apr 9, 2008)) Given these facts, it cannot be stressed enough that Applicant's loyalty is not at issue.

In requesting an administrative decision based on the written record, however, questions regarding Applicant's family members remain unanswered and some security concerns remain. Applicant is clearly close to his family in Afghanistan, with whom he maintains weekly contact, provides them with a home, and annually wires them money. Information about his siblings, especially his sisters and uncles, is incomplete. Moreover, information about his wife is scant. Given his work and their vulnerabilities in present-day Afghanistan, there is insufficient information to conclude that Applicant's materials mitigate foreign influence security concerns.

Formal Findings

FOREIGN INFLUENCE

AGAINST APPLICANT

Allegation 1.a:

For Applicant

Allegations 1.b-1.d:

Against Applicant

Allegation 1.e:

For Applicant

Allegations 1.f-1.h:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Security clearance is denied.

Arthur E. Marshall, Jr.
Administrative Judge