



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



In the matter of:

ISCR Case No. 15-06891

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

July 31, 2017

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On April 25, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant submitted an undated written reply to the SOR, and requested a decision on the record. (RSOR.) Department Counsel requested that the case be decided after a hearing before an administrative judge. The case was assigned to me on July 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

of hearing on August 7, 2016, scheduling the hearing for August 29, 2016. Because the Applicant was unavailable for several months, a second notice of hearing was issued on October 24, 2016, scheduling the hearing for December 21, 2016. The hearing was convened as scheduled.

At the hearing, the Government offered Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf and presented no documents. The record was left open until January 22, 2017, for receipt of documentation. Documents were submitted and have been marked as Applicant's Exhibits A and B.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a summary of the facts, supported by Exhibit 4. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to the allegations in SOR 1.a and 1.c. through 1.f. He denied SOR allegation 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 31 years old. He was born in Afghanistan in 1985, and he moved to the United States in 2008. He became a naturalized United States citizen in 2014. Applicant has been married to his wife since 2008, and they have one son, age 4. Applicant's wife was born in Afghanistan, and she and their son are both Dutch citizens. Applicant indicated that when he has completed his paperwork he will apply for his son to become a United States citizen. Applicant graduated high school and attended three years of law school in his native Afghanistan. He is also a registered dental assistant. He has been employed by a defense contractor as a Linguist/Interpreter since January 2015, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 5-6, 26-32, 36.)

Guideline B - Foreign Influence

The SOR lists six allegations regarding Foreign Influence, under Adjudicative Guideline B:

1.a. It is alleged in the SOR that Applicant's mother is a citizen and resident of Afghanistan. As reviewed above, Applicant admitted this allegation in his RSOR. At the hearing, Applicant testified that his mother is approximately 65, and is a housewife. She lives off Applicant's late father's pension, but Applicant also supplies \$300 to \$500 a month. Applicant indicated that his mother plans to move to the United States once he

has a place for her to live with him, and he does all of the paperwork involved. He speaks with his mother once or twice a month. (Tr at 49-52, 54, 63.)

2.b. It is alleged in the SOR that Applicant has two brothers, who are citizens and residents of Afghanistan. Applicant denied this allegation in his RSOR. Applicant testified that one of his brothers is a citizen and resident of Afghanistan, but his other brother resides in the United Kingdom and is a citizen of the Netherlands. Applicant's brother, who is a citizen and resident of Afghanistan, is a part-time college teacher. He resides with Applicant's mother, and Applicant speaks to him whenever he call his mother, once or twice a month. (Tr at 52-54.)

2.c. It is alleged in the SOR that Applicant has four sisters, who are citizens and residents of Afghanistan. Applicant admitted this allegation in his RSOR. He testified that he has not spoken to one sister for more than two years, and the other three he speaks to once a year. He stated that one of his sisters teaches at a private school. (Tr at 54-57.)

2.d. It is alleged in the SOR that Applicant has three brothers-in-law, who are citizens and residents of Afghanistan. One of his brothers-in-law was a captain in the Afghan army. Applicant admitted this allegation in his RSOR. He testified that since he does not speak to this bother-in-law, who was a captain in the Afghan army, he does not know what his current status is in the military. (Tr at 57.)

2.e. It is alleged in the SOR that Applicant has one sister-in-law, who is a citizen and resident of Afghanistan. Applicant admitted this allegation in his RSOR. Applicant described her as a housewife. (Tr at 58.)

2.f. It is alleged in the SOR that Applicant has one uncle, who is a citizen and resident of Afghanistan. Applicant admitted this allegation in his RSOR. He testified that his uncle is a civil engineer. (Tr at 58-60.)

Applicant testified that beside his wife and son, his only relatives in the United States are third or fourth cousins with whom he has no regular contact. None of his relatives in Afghanistan have come to visit him in the United States. He owns no property in the United States, Afghanistan, or anywhere else, although he does hope to purchase a home in the U.S. Applicant testified that he is totally loyal to the United States. (Tr at 35, 39, 62.)

Mitigation

Applicant submitted a number of documents in mitigation. They include seven very positive character letters (Exhibit A) and a packet of supporting documents, which included: a Petition for name change, and 14 letters and certificates of appreciation and training. (Exhibit B.)

Current Status of Afghanistan

Afghanistan has been an independent nation since August 1919, after the British relinquished control. A monarchy ruled from 1919 until a military coup in 1973. Following a Soviet supported coup in 1978 a Marxist government emerged. In 1979, Soviet forces invaded and occupied Afghanistan, until the Soviets withdrew in 1989. After the withdrawal a civil war continued, and in the mid-1990s the Taliban rose to power. The Taliban committed massive human rights violations and provided sanctuary to Osama Bin-Laden and Al Quaida. After the September 11, 2001 terrorist attacks the United States forces and a coalition commenced military operations in October 2001, and forced the Taliban out of power and a new democratic government was installed in 2004.

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly frequent, sophisticated, and destabilizing. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

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, administrative judges apply the guidelines 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), the entire process is a conscientious scrutiny 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 national security eligibility will be resolved in favor of 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies 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.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be “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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Disqualifying conditions (a) and (b) are potentially applicable in this case:

(a) contact, regardless of method, 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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the

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

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country;

(d) counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security;

(e) shared 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;

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and

(i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant has a significant number of close family members, especially his mother to whom he gives \$300 to \$500 a month for support, who are citizens and residents of Afghanistan. His ties to the United States are extremely limited to only his wife and son, neither of whom are currently United States citizens. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Because of the strong familial ties to Afghanistan, and the limited contact with the United States, I do not find that any of the mitigating factors are applicable in this case.

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 all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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. Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant not mitigated the Foreign Influence security concerns under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against 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.

Martin H. Mogul
Administrative Judge