



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



In the matter of:)
)
) ISCR Case No. 15-08476
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2017

Decision

WHITE, David M., Administrative Judge:

Applicant was born in Afghanistan. He became a naturalized U.S. citizen in 2014. His Afghan passport was surrendered to his employer in 2015, and expired in 2016. His wife is a permanent U.S. resident, and two children are U.S. citizens. However, he retains significant connections to many family members who are still residents and citizens of Afghanistan. Applicant failed to mitigate resulting security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 16, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 26, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence), and Guideline C (Foreign Preference). The action was taken under Department of Defense 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. The SOR detailed reasons why the DoD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance.

Applicant answered the SOR in writing (Answer) on May 8, 2016, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on September 19, 2016, and issued a Notice of Hearing on November 17, 2016, scheduling the hearing for December 5, 2016. The hearing convened as scheduled. The Government offered four exhibits (GE 1 through 4) into evidence. Applicant testified and offered 11 exhibits (AE A through K) into evidence. All Government and Applicant exhibits were admitted without objection. The Government also requested administrative notice of facts about Afghanistan, to which Applicant had no objection. The request was marked Hearing Exhibit (HE) II, and administrative notice was taken of the facts stated therein. DOHA received the transcript of the hearing (Tr.) on December 15, 2016.

Findings of Fact

In his Answer, Applicant admitted all of the facts alleged in SOR ¶¶ 1.b through 1.g, concerning his birth-family members who are citizens and residents of Afghanistan. He denied the SOR ¶ 1.a allegation that his wife is also a resident citizen of Afghanistan because she had recently obtained U.S. permanent resident status. He also denied the SOR ¶ 2.a allegation that he had an Afghan passport because he had surrendered it to his employer's Facility Security Officer (FSO) in June 2015. His admissions are incorporated in the following findings of fact.

Applicant was born in Afghanistan in 1982. He has been employed, through various contractual arrangements, as a linguist supporting U.S. forces in Afghanistan since late 2003. He attended two years of university studies in Afghanistan, and said that he was awarded an associate's degree. He immigrated to the United States in March 2009, under a special immigrant (SQ1) visa program for Afghan nationals who provided more than a year of faithful and valuable service to the U.S. Government, and were determined by the Chief of Mission to have experienced, or be experiencing an ongoing serious threat as a consequence of that service.¹ He became a naturalized U.S. citizen in April 2014. He is married and has two young children. He has no military service and has never held a security clearance. (GE 1; GE 2; AE E; AE F; AE J; Tr. 6-8, 23, 44-46, 49-50.)

Applicant earned a number of commendations for his service as a linguist in support of U.S. forces in Afghanistan. A captain and a second lieutenant with whom he served in 2010 wrote letters commending his dedication, professionalism, and contributions to mission accomplishment. The colonel, for whom he most recently performed linguist services in connection with high-level coalition advisor duties, also wrote a letter commending his consistently outstanding and trustworthy performance in dangerous and sensitive situations during their six months together. (AE C; AE D.)

Applicant has a large number of immediate and extended family members who were born as resident citizens of Afghanistan, including his parents, parents-in-law, four

¹ See 74 Fed. Reg. 61517 (Nov. 25, 2009).

brothers, and a sister. He married his wife, an Afghan citizen, in Afghanistan during April 2011. She first came to the United States in 2014, and received U.S. permanent resident status in March 2015. Their daughter was born in Afghanistan in April 2013, and their son was born in the United States in May 2015. Applicant purchased a home in the United States in 2014, owns a car, and has about \$53,000 in bank account savings here. He owns no property in Afghanistan. His wife plans to petition to become a naturalized U.S. citizen when eligible in April 2018. Their daughter was granted U.S. citizenship in 2015. (Answer; GE 1; GE 3; AE A; AE G; AE H; AE I; Tr. 26, 44, 51-54, 61-65.)

Applicant's father is currently unemployed, after working in a low-level logistic position supporting United Nations landmine clearing operations. He owns the family residence in their home city, and 11 acres of unoccupied land in a different province. Applicant's mother works exclusively as a homemaker. His sister is unmarried and studying to be a tailor. Two of Applicant's brothers serve in Afghan government positions involving security operations at very high-levels.² A third brother is disabled, unemployed, and lives with their parents. His fourth brother recently graduated with an engineering degree and owns a school, where he teaches classes in mathematics and engineering. He also lives in the family home, and provides financial support to the family members living there. Applicant's father-in-law used to own a shop but now drives a taxi. His mother-in-law is a homemaker. Applicant and his wife communicate between weekly and yearly with their various family members in Afghanistan, but do not discuss the nature of his work with them. (Answer; GE 1; GE 2; GE 3; Tr. 54-63.)

Applicant still had his Afghan passport when he completed his February 2015 e-QIP, having only become a U.S. citizen ten months earlier. He voluntarily surrendered that passport to his employer's FSO in June 2015, and it expired in June 2016. He currently has and uses a U.S. passport issued in April 2014. (Answer; GE 1; AE B; AE E; Tr. 37-38, 42, 65-67.)

After Applicant entered the United States with his SQ1 visa in March 2009, he worked as a waiter in a restaurant for about four months. He returned to Afghanistan in August 2009 to work for his present employer as a contract linguist for U.S. forces until February 2011, with a 12-day vacation visit to the United States in September 2010. He briefly returned to the United States in February 2011 in order to resign from his linguist position. He then went back to Afghanistan in his personal capacity to visit his mother, who was ill, and to marry his wife. In June 2011, he returned to the United States and was rehired by his employer. He lived at a friend's house in the United States until November 2011, when he returned to Afghanistan to perform linguist duties. In April 2013 he returned to the United States, and was unemployed until that October, when he started work as a retail cashier. In April 2014, he returned to Afghanistan to visit family and friends for three to four weeks. In January 2015 he resumed working for his employer as a contract linguist, and went back to Afghanistan in March 2015. He returned to the United States for nine days in June 2015, after his son was born, then

² The SOR only alleged this concern with regard to one of his brothers. A second brother more recently began working in a similar position. More specific description of their duties is not appropriate here.

returned with his wife and two children to Afghanistan. According to Applicant (as described in AE J), he and his family remained in Afghanistan thereafter, with the exception of a three-day visit to the United States in December 2015, a twelve-day visit to the United States in May and June 2016, and a planned two-week vacation in the United States that began eight days before his hearing in this case. (GE 1; GE 4; AE J; Tr. 52-53.)

I take administrative notice of the facts concerning Afghanistan that are set forth on pages 3 through 6 of HE II. Highlights include Afghanistan's continuing problems with internal corruption, and threats to U.S. interests from insider attacks, as well as from insurgency and extremist networks operating throughout the country. The U.S. State Department has issued a Travel Warning against U.S. citizen travel within Afghanistan because continued instability, combat operations, and threats by terrorist organizations against U.S. citizens make all areas of the country unsafe. (HE II.)

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. Directive ¶ E3.1.15 states that, "[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 concerns 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 sets out two conditions that could raise security concerns and may be disqualifying in this case:

(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, 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 became a naturalized U.S. citizen in April 2014, and his wife was granted permanent U.S. resident status in March 2015. His young children are also U.S. citizens. However, since coming to the United States in March 2009 on the basis that his work with U.S. forces there caused him to experience a serious threat to his safety, he has spent significantly more time working and/or visiting family in Afghanistan than living or working here. Applicant reported that his wife and children accompanied him while he was in Afghanistan between June 2015 and December 2016. They spent only three weeks in the United States during that period.

All other members of Applicant's and his wife's families are resident citizens of Afghanistan, and at least one member of his immediate family works in a high-level security position with the Afghan government. These relationships raise security concerns about his obligation or desire to assist those family members by providing sensitive or classified information, if faced with pressure or coercion from an outside source. The presence of active anti-U.S. terrorist operatives and the overall security situation that currently exists in Afghanistan create a heightened risk of foreign inducement, manipulation, or exploitation. There is substantial evidence to establish security concerns under AG ¶¶ 7(a), and 7(b), based on these relationships, thereby shifting the burden of proof to Applicant to demonstrate mitigation.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. The three 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.

AG ¶¶ 8(a) and 8(c) do not provide mitigation under the facts in this case. Applicant's wife, parents, four brothers, sister, and parents-in-law are citizens of Afghanistan, where a heightened risk of foreign exploitation, manipulation, or coercion exists. Two of his brothers work in sensitive positions at high levels of the Afghan government. His wife and children are U.S. permanent residents or citizens, but have

spent most of the time since June 2015 accompanying Applicant in Afghanistan. He maintains regular relationships and communication with his family members, as is normal and expected of a person with his good character. He did not rebut the presumption that his contacts and relationships with his family members are neither casual nor infrequent.

AG ¶ 8(b) has only minimal application to date. Applicant initially moved to the United States in March 2009, and has been a U.S. citizen for only three years. Most of that time he has spent working or visiting family in Afghanistan. Although Applicant's service as a contract linguist in support of U.S. forces in Afghanistan has been highly commendable, the evidence does not yet clearly establish that Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest in protecting sensitive information or technology.

Guideline C, Foreign Preference

AG ¶ 9 sets forth the security concern involving foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes one condition supported by evidence in this case that could raise a security concern and may be disqualifying:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.

Applicant had an active Afghan passport, which he used for his lawful entry into the United States. That passport expired in June 2016. He obtained a U.S. passport in April 2014, and surrendered possession of his Afghan passport to his FSO in June 2015. The evidence potentially raised the above disqualifying condition as of the time the SOR was issued, shifting the burden to Applicant to rebut, extenuate, or mitigate the security concern.

AG ¶ 11 provides a condition that could mitigate the foreign preference security concern in this case:

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

Applicant's Afghan passport was surrendered to his FSO in June 2015, and expired in June 2016. It is now invalidated. Full mitigation of the Guideline C security concern was established under AG ¶ 11(e).

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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Some mitigating evidence weighs in Applicant's favor. He is an intelligent and articulate person, who has chosen to obtain U.S. citizenship for himself, his wife, and his children. He continues to provide dedicated and valuable services as a linguist supporting U.S. forces operating in his native Afghanistan, despite the officially recognized serious threats toward him as a result of that service. His Afghan passport was recently invalidated through expiration.

There are no allegations of any misconduct by Applicant. He does, however, continue to have close connections to Afghanistan through numerous family members who are citizens and residents there. He provided insufficient evidence that the resulting potential for pressure, coercion, exploitation, or duress is diminished at present; particularly in light of the demonstrated heightened risk from the serious personal threats he experienced.

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, Applicant has not sufficiently mitigated the security concerns arising under Guideline B. Overall, the record evidence generates significant 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	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.

David M. White
Administrative Judge