



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-02005
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

05/31/2018

Decision

HOGAN, Erin C., Administrative Judge:

On February 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence. The action was initially taken 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 within the Department of Defense on June 8, 2017.

On March 27, 2018, Applicant timely answered the SOR and requested an expedited hearing before an administrative judge. Department Counsel was ready to proceed in April 2018. The case was assigned to me on April 30, 2018. On that same date, a Notice of Hearing was issued, scheduling the hearing for May 2, 2018. Applicant waived the 15-day notice requirement. The hearing was held as scheduled. During the hearing, the Government offered two exhibits, which were admitted without objection as Government Exhibits (Gov) 1 and 2. Applicant offered five exhibits, which were admitted as Applicant Exhibits (AE) A – E, without objection. The Government requested administrative notice be taken of certain facts regarding the country of Afghanistan. The administrative notice document was marked as Administrative Notice I

(Admin Not I). The transcript was received on May 9, 2018. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice - Afghanistan¹

Afghanistan is an Islamic Republic with a directly elected president, a bicameral legislative branch, and a judicial branch. Afghanistan remains an important partner with the United States against terrorism. Afghanistan works with the U.S. to eliminate the remnants of al-Qaeda and its affiliates. The U.S. continues to invest U.S. resources to help Afghanistan improve its security, governance, institutions and economy. The United States' strong bilateral relationship with Afghanistan is guided by the Enduring Strategic Partnership Agreement (SPA) between the Islamic Republic of Afghanistan and the United States signed in May 2012, which lays out respective economic and political commitments, as well as by the Bilateral Security Agreement signed in September 2014, which lays out mutual security understandings. In July 2012, following the country's entry into the SPA, President Obama designated Afghanistan a Major Non-NATO ally.

The U.S. has engaged in Afghanistan since 2001. There has been a drawdown in the number of troops in Afghanistan. The troops are there to train the Afghan forces to become more effective, professional, and sustainable. U.S. forces continue to disrupt and degrade al-Qaeda and Islamic State activities in Afghanistan through partnered operations with Afghan forces, as well as unilateral operations. The U.S. makes it a priority to ensure that Afghanistan is never again a safe haven for terrorism.

The U.S. Department of State issued a travel advisory warning U.S. citizens not travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. Travel to all areas of Afghanistan remains unsafe because of the ongoing risk of kidnapping, hostage-taking, suicide bombings, widespread military combat operations, landmines, terrorist and insurgent attacks, including attacks using vehicle-borne or other improvised explosive devices (IEDS). Attacks may also target official Afghan and U.S. government convoys and compounds, foreign embassies, military installations, and other public areas.

Afghanistan also has significant human rights problems to include extrajudicial killings by security forces; ineffective government investigations of abuse and torture by local security forces; poor prison conditions; arbitrary arrest and detention; judicial corruption and ineffectiveness; violations of privacy rights; restrictions on freedom of speech, press, religion, and movement; pervasive governmental corruption; underage and forced marriages; abuse of children; trafficking in persons including forced labor; discrimination against persons with disabilities; discrimination and abuses against ethnic minorities; societal discrimination based on race, religion, gender, sexual orientation, and HIV/AIDS status; and abuse of workers' rights, including child labor.

¹ Admin Not I (Administrative Notice filing on Afghanistan and supporting documents)

Widespread disregard for the rule of law and official impunity for those who committed human rights abuses were serious problems. The government did not consistently or effectively prosecute abuses by officials, including security forces.

Findings of Fact

Applicant is a 34-year-old linguist who is an employee of a Department of Defense contractor since 2009. He currently works in Afghanistan. He is applying for a security clearance. Applicant was born in Afghanistan. He graduated from high school in Afghanistan. He moved to United States in 2008. He became a U.S. citizen on May 8, 2013. He married in September 2007. His wife is a citizen of Afghanistan, but is a permanent resident of the United States. They have two sons, ages eight and sixteen months. Both children were born in the United States. (Tr. 23 - 31; Gov 1; Answer to SOR) (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.)

Foreign Influence

Applicant was born and raised in Afghanistan. He has two older sisters and two younger brothers. In 2004, while an Afghan citizen, Applicant was hired to work as a linguist in support of American military operations in Afghanistan. He initially worked for the U.S. Marine Corps in Helmand province for six months. During this time, they encountered a lot of engagement with the enemy and insurgents. He then worked for U.S. Special Forces in Kabul. The mission was to advise and provide mentorship to Afghan commando forces. (Tr. 27) Applicant received high praise for his support as a linguist. (AE C at 9, 15, 17, 19, 21, 22-25, 27.)

On January 31, 2007, Major General B. F., recommended Applicant for selection for as an immigrant to the United States under Special Immigrant Visa (SIV) status for his dedicated service supporting Combined Joint Task Force (CJTF) – 76, supporting Operation Enduring Freedom. He noted Applicant served as an interpreter in the Public Affairs Office for over two years. Applicant contributed significantly to the Public Affairs Office's ability to effectively communicate the CJTF story to the Afghan people. (AE C at 28) In 2008, Applicant was granted SIV status and moved to the United States. When he became a U.S. citizen in 2013, he renounced his Afghani citizenship and surrendered his Afghani passport. (Tr. 24, 27-28, Gov 1; Response to SOR)

Applicant married his wife in Afghanistan in 2007. She came to the United States in 2008 and is a permanent resident of the U.S. She needs to learn English in order to pass her citizenship test. When he first moved to the U.S., Applicant served as a role player and cultural advisor at an Army installation. It was a temporary job. The training was held five to six times a year, lasting two to three weeks at a time. Applicant was unemployed between courses. After his temporary job ended, he worked as a pizza delivery driver for about five months. In 2009, he was hired to be a linguist by his current employer. He works overseas in Afghanistan. (Tr. 26, 27)

Applicant's two brothers also worked as linguists supporting the U.S. military operation in Afghanistan. One brother is 29. He lives in the United States. Applicant and his family live with this brother when they are in the United States. His brother owns the house. His brother immigrated the U.S. with a SIV in 2008. He is now a U.S. citizen and works in the U.S. as a linguist-analyst for another DoD contractor. (Tr. 39-40) Applicant's other brother is 26. He also lives in the house. He is single and worked as an IT administrator for a DoD contractor. He became a permanent U.S. resident on November 13, 2012. He applied for U.S. citizenship and is waiting for the approval of the application. He also previously worked as a linguist supporting the U.S. military in Afghanistan. (Tr. 43-45; AE D)

Applicant's parents and two sisters are citizens of and reside in Afghanistan. His father is a retired high school teacher. His mother was a housewife. His father was recently diagnosed with ALS. His mother has high blood pressure and stomach issues. Applicant sponsored his parents to immigrate to the United States. They received their visas in April 2017 and moved to the United States on May 11, 2018, about a week after the hearing. One of Applicant's sisters has mental health issues and does not work. She lived with their parents in Afghanistan. When Applicant's parents moved to the United States, she now lives with Applicant's other sister. His other sister is married and has several children. Her husband is an anesthesiologist. None of his family has contacts or work for the government of Afghanistan. (Tr. 33-38)

Applicant's younger brother recently traveled back to Afghanistan to visit and to help his parents with their immigration paperwork. He traveled back to the United States with Applicant's parents on May 11, 2018. Applicant's parents intend to move to the United States permanently. His father is deeding the house to his daughter and her family. They will move into his parents' house and take care of Applicant's sister with mental health issues. (Tr. 43-44, 55)

From November 2010 to approximately December 2017, Applicant sent approximately \$240,000 in financial support to his parents in Afghanistan. At hearing, Applicant explained that when he would travel to Afghanistan for work, his wife and son would travel to Afghanistan and stay with Applicant's parents. She was lonely in the United States and preferred to stay with his family while he was working in Afghanistan. The money Applicant sent paid for renovations and an addition on his parents' house to make it more comfortable for his wife and children to also reside there. He would deposit money in his wife's checking account with a U.S. bank. His wife would withdraw the money in increments from an automated teller machine (ATM) while she was in Afghanistan. Applicant's wife also purchased some expensive jewelry and some expensive hand woven silk rugs for their home in the United States. (Tr. 52-54; Gov 2)

Since his parents are immigrating to the United States. Applicant's wife will not be traveling to Afghanistan while Applicant is deployed on his mission in Afghanistan. Applicant will no longer send money to Afghanistan because his parents and family are now in the United States. His oldest son had a private tutor when they lived in Afghanistan. He currently attends the public school in the United States. (Tr. 30-33, 54)

Applicant's mother-in-law and seven brothers-in-law are citizens of and reside in Afghanistan. His father-in-law passed away a few years ago. His wife calls her mother about once a week. Applicant's brothers-in-law own grocery stores. Applicant has minimal contact with his brothers-in-law. His wife's relatives have never traveled to the United States to visit Applicant and his family. Applicant's wife does not intend to travel back to Afghanistan, but will likely travel to Afghanistan if her mother passes away. (Tr. 50-52, 57-58)

Applicant purchased a home in the United States near the area where he resides with his family while in the United States. He purchased the house for \$340,000. He has about \$16,000 left on the mortgage. The house is currently worth about \$400,000. Applicant rents the property. He has no investments outside of the United States to include in Afghanistan. All of his assets are located in the United States. (Tr. 40-41, 55-56)

Applicant is very proud of his service as a linguist/culture adviser in support of the U.S. military in Afghanistan. He is very proud to be a U.S. citizen.

Whole-Person Factors

Colonel N., the current Commanding Officer of the Special Operations Advisory Group, NATO Special Operations Component Command, strongly recommends Applicant for a security clearance. He has worked with Applicant over the past twelve months. Applicant served as the groups' linguist and interpreter. Applicant was entrusted with very sensitive information. He provided simultaneous translations of unclassified intelligence and operational briefings, interpreted time-sensitive military documents and agreements and served as the de facto cultural advisor. Applicant has proven himself to be a man of integrity, loyal, and 100% dedicated to the interests of the U.S. government. His work product is superior and he has never violated OPSEC protocols. Applicant's "impeccable performance of duty, high level of efficiency, unquestionable allegiance to the U.S. Government, and outstanding results provided in the most complex of assignments highly distinguished him from among his peers." Applicant has earned their trust, respect, and confidence. (AE C at 1)

Colonel P., the previous Commanding Officer of the Special Operations Advisory Group, selected Applicant among 140 interpreters to be the command interpreter. He describes Applicant as "the single best linguist, I have worked with (in over 22 years of working with foreign partners and over two years in Afghanistan)." In addition to serving as a linguist, Applicant tactfully guides coalition and Afghan partners into the "right places" in interpersonal interactions, ensuring smooth communications. Applicant has earned the deep trust of Afghan Senior General Officers as well as Coalition General Flag Officers, diplomat, and VIPs. Colonel P. states Applicant is a man of high character and integrity. He would trust him with the life and care of his family. Applicant is the type of teammate everyone wants: "high expertise, high trust, high impact on the mission." (AE C at 2)

Applicant has received several Certificates of Appreciation, military coins, and other favorable reference letters stating highly favorable things about him and about his

skills as a linguist interpreter in support of U.S. military operations in Afghanistan. (AE C at 3 – 28)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 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 access for national security eligibility 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.

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

A person who seeks access to classified information enters 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 that 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 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 *a/so* 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 Government's concern under Foreign Influence:

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.

AG ¶ 7 lists conditions that could raise a security concern and may be disqualifying. The following are applicable to Applicant's 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; and
- (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.

In Applicant's case, AG ¶ 7(a), AG ¶ 7(b), and AG ¶ 7(f) apply. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant's parents, two sisters and brother are citizens of Afghanistan. At the time the SOR was issued, Applicant's parents and sisters resided in Afghanistan. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Afghanistan's instability, serious human rights problems, and issues with terrorism. The government of

Afghanistan has made some progress, but a heightened risk remains. Applicant's contacts with his family in Afghanistan also creates a potential conflict of interest between his obligation to protect classified information and his desire to help his family members by providing that information.

AG ¶ 7(f) applies because Applicant sent a significant amount of money to Afghanistan, most of the money was used to remodel his parents' house.

The Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(f) as a result of Applicant's admissions and evidence presented. The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate security concerns. The following mitigating conditions potentially apply:

(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; 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.

I find AG ¶ 8(a) applies to Applicant's case. It is clear that Applicant has ties of affection and obligation to his family members in Afghanistan. However, it is unlikely Applicant will have to choose between the interests of his relatives in Afghanistan and the interests of the United States. Applicant has served as a linguist in Afghanistan for over a 13-year-period. He is known for protecting sensitive information. He took precautions while working in Afghanistan to never visit his family. His parents have since moved to the United States. His brother who is a permanent resident of the United States traveled back to Afghanistan to assist in their parents move. He has now returned to the United States. Applicant's two sisters, his sister's family, and his wife's family members still reside in Afghanistan.

AG ¶ 8(b) applies because Applicant has deep and longstanding ties in the United States. Applicant moved to the United States in 2008 on a SIV. He has served as a linguist supporting the US military operation since 2004. He became a U.S. citizen

in May 2013. His wife is a permanent U.S. resident and his two sons were born in the United States. While his family traveled and lived in Afghanistan in the past while Applicant was working as a linguist, they now are living in the United States. His oldest son now attends a U.S. school. Applicant and one of his brothers are citizens of and reside in the United States. Both of his brothers previously served as linguists in Afghanistan supporting US military operations. One of his brothers currently works as a linguist for a DoD contractor in the United States. Applicant and his brothers have worked in support of U.S. forces since 2004. He has worked alongside U.S. forces under austere combat conditions. In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I considered Applicant's longstanding commitment to the United States as well as his favorable contributions to national security. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

AG ¶ 8(f) applies with regards to the money Applicant sent to Afghanistan. While the amount was significant it was used to remodel his parents' home to accommodate his wife and children while they resided at the home. His parents and his wife and children now reside in the United States. His father is transferring the home he owns in Afghanistan

to Applicant's sister. Applicant agrees with his father's decision. His wife also used a large portion of the money to purchase jewelry and carpets which she has brought to the United States. All of Applicant's current property and investments are located in the United States. He purchased a home and is close to paying off the mortgage. He no longer has any financial interests in Afghanistan.

The security concerns under Foreign Influence are mitigated.

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 the facts and circumstances surrounding this case. I considered Applicant and his two brothers served as linguists in support of the U.S. military mission in Afghanistan since 2004 at risk to their safety. Applicant has lived in the United States since 2008. He became a U.S. citizen in 2013. He currently serves as an interpreter in Afghanistan. His wife is a permanent resident who lives in the United States with his two children. He is sponsoring his parents immigration to the United States and they arrived in the United States in May 2018.

I considered Applicant's outstanding record as a linguist working on sensitive projects that were vital to U.S. national security. He received high praise from several U.S. military officers who attest to his dedication to the mission as well as his trustworthiness. The foreign influence security concerns are mitigated.

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-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 security interests of the U.S. to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge