



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-07895
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
Rhett E. Petcher, Esq., Department Counsel

For Applicant: *Pro se*

10/25/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate foreign influence security concerns. He has worked as a translator for the U.S. military for over 10 years. Senior U.S. military officers who have worked with Applicant vouch for his reliability, trustworthiness, and loyalty to the United States. Clearance is granted.

Statement of the Case

On April 25, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging that Applicant's connections to his relatives in Afghanistan raise a security concern under the foreign influence guideline. Applicant answered the SOR and requested a decision on the administrative (written) record.¹

On November 30, 2016, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department

¹ Applicant's mother (1.a), a brother (1.f), and a friend (1.g) were alleged in the SOR as potential sources of adverse foreign influence. Applicant's mother died shortly before the SOR was issued. The brother and friend are U.S. citizens, who reside in the United States. Accordingly, these three allegations are decided for Applicant and will not be further discussed.

Counsel forwarded to Applicant fourteen exhibits (Items 1 – 14) that the Government offers for admission into the record. Applicant submitted a response to the FORM on December 24, 2016. With his Response, Applicant submitted reference letters from senior U.S. military officers who have worked with him in Afghanistan. The Response and accompanying exhibits, which total 35 pages, were collectively marked Exhibit A.

On October 1, 2017, after the Hearing Office received confirmation that Applicant remained sponsored for a clearance, I was assigned the case. Without objection, the above-referenced exhibits are admitted into the record.

Findings of Fact

Applicant was born in Afghanistan. After graduating from college in 2004, he was recruited and hired by the U.S. military. From 2004 to 2007, Applicant worked for the U.S. military as a translator in Afghanistan. During this time, he was investigated by the U.S. military every six months. He earned a special immigrant visa in recognition of his work for the U.S. military and the dangers that he faced due to this work. He immigrated to the United States in 2007, and became a naturalized U.S. citizen in 2013.

Applicant has been employed as a defense contractor since immigrating to the United States. He has served as linguist, translator, and cultural advisor for the U.S. military. He has deployed back to Afghanistan in support of the U.S. mission. He has gone through extensive vetting by the U.S. Government in connection with his employment on other U.S. Government contracts and immigration to the United States.

In 2013, Applicant submitted a security clearance application in connection with his employment in the defense industry. He listed his foreign connections and contacts, and discussed them with a security clearance investigator. He also discussed with the investigator past background investigations conducted by the U.S. Government, including one a few months earlier when Applicant took and passed a polygraph examination in connection with his assignment to a U.S. military counterintelligence unit. Applicant has submitted similar applications in the past and is under the belief that he was previously granted a position of trust and, possibly, a security clearance.²

Applicant has received numerous awards and certificates for his work in support of the U.S. military.³ Before he was permitted to immigrate to the United States, an extensive background investigation was conducted by the U.S. military. Based on the positive results of the background investigation and Applicant's contributions to the U.S. military, those in his chain-of-command strongly recommended that the commanding general support Applicant's application for a special immigrant visa.⁴

² Items 3 – 8.

³ Response at 8, 26-33.

⁴ Response at 6-9.

A two-star general wrote the following in support of Applicant's immigration application:

It is my honor to recommend [Applicant] for special immigrant status under the provisions of Section 1959 of the National Defense Authorization Act . . . [He] has supported US forces in Afghanistan since July 2004, and meets all the requirements for immigration under this statute.

[Applicant] has been a vital contributor to the US mission in Afghanistan on a number of levels. He has contributed significantly to our effective interaction with the Afghanistan Ministry of Defense (MoD) . . . As a translator and interpreter, he has participated in daily meetings with Senior Leadership of the Afghan National Army, and his skills have been absolutely crucial in dialogue between representative of the MoD and our counterparts on the US and Coalition side. His actions and demeanor have directly positively impacted positive development of the Afghan National Army. His steadfast commitment to professional service illustrates his dedication to the cause of freedom and democracy in Afghanistan.

[Applicant] is a singularly impressive individual. [He] has proven his worth to senior members of my staff with intellect and character, and has continuously garnered endorsements of senior officials whom he has supported. . . . [He] is always relied upon as a trusted advisor by senior US, Coalition and Afghan staff members.

[Applicant] is clearly one of the top translators supporting US forces in Afghanistan at this time, and has my strongest recommendation for immigration. Immigration under this program is an appropriate means to identify an individual who has continuously supported our US and Coalition forces, especially at great personal risk. More importantly, approving this request will continue to support US National Security objectives, and build strong ties with a free and democratic Afghanistan.⁵

The former logistics chief for coalition forces in Afghanistan, a U.S. military officer in the O-6 paygrade, echoes the general's favorable opinions and further notes that Applicant "holds himself to the highest standards both personally and professionally." The O-6 goes on to state that "without [Applicant's] professional, close-working relationships with the General Staff officers, and 'can-do' attitude, the success of the [US] mission would have been noticeably degraded."⁶ Another O-6 U.S. military officer who worked with Applicant in Afghanistan submitted a letter providing his similar favorable impressions of Applicant's work and character.⁷

⁵ Response at 3.

⁶ Response at 4.

⁷ Response at 5.

Applicant's father, a brother, a sister, and his father and mother-in-law are citizens and residents of Afghanistan (SOR 1.b, 1.c, 1.d, and 1.e). None of Applicant's relatives have any current connection to the Afghan government or any foreign group or entity. When Applicant submitted his security clearance application in 2013, his wife was living in Afghanistan in his parents' home. Applicant was able to resolve the bureaucratic issue stalling her immigration to the United States. She now lives in their home in the United States, and is a naturalized U.S. citizen.

Applicant's father is a retired bank clerk, and resides in a home close to the U.S. Embassy. His brother worked for U.S. coalition forces, but now runs his own shop. His brother no longer lives in his father's home. Applicant has no contact with his brother due to a family dispute. His sister married in early 2015 and is no longer considered a member of his father's household. His father-in-law is a shopkeeper, while his mother-in-law does not work outside the home. Applicant has limited contact with his father and his in-laws, generally speaking to them once a year during the holidays via the internet.

Applicant used to send money to his family in Afghanistan (SOR 1.h). He did so to provide financial support to his wife when she lived there and for his ill mother's medical care before she died in April 2015. He last sent money to his family in 2015, to help pay for his mother's funeral expenses. He sent this money to his brother. He also sent his brother a sizeable amount of money to replace a car, which his brother claimed had been stolen. He has not sent any additional money to his brother and they no longer speak.

Applicant surrendered his former Afghan passport and renounced his Afghan citizenship in approximately 2013, in connection with his employment as a defense contractor. Applicant and his wife decided before his recent re-deployment to Afghanistan to not tell their family or anyone about his whereabouts or his work.⁸

Administrative Notice - Afghanistan.⁹

Afghanistan is an Islamic Republic with a directly elected president, a bicameral legislative branch, and a judicial branch. The United States military has been engaged in Afghanistan since 2001. The State Department reports that, between 2001 and 2016, over 2,200 U.S. military members have died in Afghanistan. Additionally, over 20,000 U.S. service members have been wounded in action.

In July 2012, Afghanistan was designated by the United States as a major non-NATO ally. Notwithstanding the efforts of the U.S. and its coalition partners, Afghanistan continues to face daunting challenges. Taliban, terrorists, and other hostile forces remain active throughout Afghanistan and pose a serious threat. The State Department warns U.S. citizens against travel to Afghanistan because of continued instability and threats against U.S. citizens. The State Department also reports the commission of human rights

⁸ Items 2 – 8.

⁹ See *generally* Items 9 – 14; as updated by current information contained in Appellate Exhibit I (publically-available U.S. State Department documents).

violations in Afghanistan, including the widespread disregard for the rule of law and official impunity for those who committed human rights abuses.

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 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) implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.¹⁰

¹⁰ However, a judge’s mere disbelief of an applicant’s testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case

Any doubt raised by the evidence must be resolved by a judge in favor of the national security. AG ¶ 2(b). See *also* SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B, Foreign Influence

Foreign contacts and 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. (AG ¶ 6.)

Individuals are not automatically disqualified from holding a security clearance because they have relatives living in a foreign country. Instead, in assessing a person’s potential vulnerability to foreign influence, a judge considers the foreign country involved, the country’s human rights record, and other pertinent factors.¹¹

In assessing the security concerns at issue, I considered all disqualifying and mitigating conditions listed under Guideline B, including the following:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, . . . 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 classified or sensitive information or technology and the

No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

¹¹ See *generally* AG ¶ 6. See *also* ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

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

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 . . . and the interests of the United States;

AG ¶ 8(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;

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; and

AG ¶ 8(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.

An applicant with relatives in a foreign country faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required “to sever all ties with a foreign country before he or she can be granted access to classified information.”¹² However, what factor or combination of factors may mitigate security concerns raised by an applicant with foreign relatives is not easily identifiable or quantifiable.¹³ Moreover, when an applicant's foreign relatives reside in a country where elements hostile to the United States and its interests operate, such an applicant faces a very heavy burden in mitigating security concerns raised by their connections to and contacts with foreign relatives.¹⁴

Here, the security concern raised by Applicant's connection to his relatives in Afghanistan is far from a mere hypothetical concern. The Taliban and other hostile forces have shown their conviction and, at times, ability to capture, torture, and kill Afghans who have been merely suspected of cooperating with USG forces. These groups have also shown a willingness to harm the family members of those who work for or cooperate with U.S. and coalition forces.

¹² ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

¹³ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

¹⁴ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

However, no one is more acutely aware of the dangers posed by his work for the U.S. military than Applicant. For over 10 years now, Applicant has demonstrated his loyalty to the United States. From 2004-2007, Applicant was employed as a linguist by the U.S. military in Afghanistan. After earning a special immigrant visa and immigrating to the United States, he found gainful employment as a defense contractor. He volunteered to return to Afghanistan and once again face the serious risks that all U.S. military members and defense contractors face. He has demonstrated his reliability and trustworthiness in this combat environment. His familial ties to Afghanistan have decreased substantially since he submitted his security clearance application in 2013. In light of the overwhelming record evidence, it is reasonable to expect that Applicant will resolve any potential conflict of interest in favor of U.S. national security interests.

Security clearance assessments about a person require a judge to closely examine the individual's conduct and circumstances, both past and present. In a Guideline B case that assessment also involves an examination of the foreign country at issue, to include their present relationship with the United States and other relevant factors. After reviewing and weighing the evidence, both favorable and unfavorable, I find that Applicant mitigated the security concerns raised by his foreign familial connections. All of the above listed mitigating conditions apply, in full or in part, and together with the favorable whole-person factors raised by the evidence,¹⁵ mitigate the foreign influence security concerns. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

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 (Foreign Influence):	FOR APPLICANT
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Subparagraphs 1.a – 1.h:	For Applicant
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Conclusion

In light of the record evidence, it is clearly consistent with the interest of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

¹⁵ See AG ¶ 2 (whole-person concept). See also SEAD-4, ¶ E.4 (relevant factors to consider in determining whether granting a person a clearance is clearly consistent with the interests of the United States).