



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 16-01121
)
)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2018

Decision

Curry, Marc, Administrative Judge:

Given the length of time Applicant has lived in the United States and the depth of his personal, professional, and community contacts here, I am confident that he would resolve any potential conflict of interest posed by his relatives who are citizens and residents of Afghanistan, in the U.S. interest. Clearance is granted.

Statement of the Case

On September 29, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR), alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On October 8, 2016, Applicant responded to the SOR, admitting the allegations and requesting a hearing. On September 25, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. DOHA scheduled the hearing for December 11, 2017. The hearing was held as scheduled. I received three Government exhibits (GE 1 – GE 3), two Applicant exhibits (AE A and AE B) and the testimony of Applicant. In addition, at Department Counsel's request, I took administrative notice of the facts set forth in seven documents (Hearing Exhibits (HE) I through HE VII). I received the transcript of the hearing on December 20, 2017.

While my decision was pending, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

Findings of Fact

Applicant is a 27-year-old single man. He graduated from college in 2014, majoring in accounting. Since then, he has worked for an accounting firm. According to a coworker, he is an asset to the team who is "always willing to go above and beyond." (AE A) According to one of the firm's partners, he is extremely hard working and is actively involved in office-sponsored fundraisers and charitable activities after work. (AE B)

Applicant was born in Afghanistan to a family of farmers, living in a remote rural area. He has four sisters and six brothers. His mother, three of the sisters, and all of his brothers are citizens and residents of Afghanistan. (Tr. 17) Applicant's father passed away in 2001. (Tr. 20)

From an early age, Applicant strongly desired an education; however, educational opportunities were limited. (Tr. 18) Moreover, his father expected him and his siblings to follow in his footsteps and become farmers when they grew up. Eventually, Applicant's father relented and allowed Applicant to move to an urban area to further his education. Applicant then went to live with his uncle. Shortly after Applicant went to live with his uncle, two of his older sisters also went to live with him and pursue an education. (Tr. 18)

Applicant was only six years old when he went to live with his uncle's family. (Answer at 1) Because his immediate family had no interest in education, they gradually began drifting apart. He only spoke with them once or twice per year during his pre-adolescence. (Answer at 1) Applicant's relationship with his immediate family became estranged when his parents made one of his older sisters stop her education, return to their home, and marry a man twice her age.

Angered and embittered by the mistreatment of his sister, Applicant, together with the other sister who had been living with their uncle, applied for refugee status in 2000 and immigrated to the United States. Applicant was 13 when he left Afghanistan. (Tr. 19)

When Applicant and his sister first arrived in the United States, they initially lived with their uncle with whom they had lived in Afghanistan. After approximately a year and a half, they moved out, and Applicant's sister became his legal guardian.

Applicant has only talked to his mother seven to eight times over the past 14 years. (Tr. 20) Since immigrating to the United States, he has travelled to Afghanistan once to visit his mother when she was sick in 2009. (Tr. 21) He also saw two of his sisters on this trip. (Tr. 25) Applicant talks to his sisters living in Afghanistan once every year to year-and-a-half. (GE 2 at 5) He has not talked to any of his brothers since 2003 or 2004. (GE 2 at 5) He provides no financial support to any of his family members. Applicant is active in his community, volunteering to help the disabled and helping with various disaster relief activities.

Administrative Notice

Although Afghanistan is an important partner with the United States in confronting terrorism, it faces a continuing threat from multiple insurgent and terrorist networks operating within the country. (HE IV at 4) In addition, there is still widespread disregard for the rule of law and targeted violence against women and girls. (HE VII at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 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 applicant's 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 adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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.” (AG ¶ 6)

Although Afghanistan is an important partner with the United States in fighting terrorism, many parts remain terrorist safe havens, and it continues to be plagued by violence and instability. Applicant has no contact with his brothers and has not seen them in approximately 15 years. He never developed a relationship with them because he left his immediate family when he was six years old to live with his uncle for seven years, then immigrated to the United States. Absent any relationship with his brothers, none of the disqualifying conditions apply.

Applicant’s mother and several of his sisters who are citizens and residents of Afghanistan, trigger the application AG ¶ 7(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.

The infrequent nature of Applicant’s contact with his sisters living in Afghanistan is sufficient to trigger the mitigating condition set forth in 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.” There is a presumption that parental relationships are not casual and infrequent, consequently, AG ¶ 8(c) does not apply to Applicant’s relationship with his mother.

Applicant has lived more than half of his life in the United States, immigrating here at age 13, and finishing high school and college here. He is a valued employee on the job, and is well-integrated into the community, participating in community service projects both through his job and through local charities. Under these circumstances, I conclude that the security concern that Applicant’s relationship with his mother poses is mitigated by 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.” I conclude Applicant has mitigated the foreign influence security concerns.

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 the 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.

I considered the whole-person factors in my analysis of the disqualifying and mitigating conditions, particularly with respect to the applicability of the mitigating condition set forth in AG ¶ 8(b).

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
Subparagraph 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 security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc Curry
Administrative Judge