



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



In the matter of:)
)
) ISCR Case No. 16-01593
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient information to mitigate the foreign influence security concerns raised by his family connections to Afghanistan. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On June 23, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (Exec. Or.) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on August 3, 2016, and elected to have his case decided on the written record in lieu of a hearing. On November 21, 2016, Department

Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on February 22, 2017. The same day, he prepared a response to the FORM, which the Defense Office of Hearings and Appeals received on or about February 28, 2017. He did not object to the Government's evidence. His response is marked as Applicant's Exhibit (AE) A and admitted without objection. The SOR and the answer (Items 1 & 2) are the pleadings in the case. Items 3 and 4 are admitted into evidence without objection. Item 5 is the Government's request for administrative notice. The case was assigned to me on October 1, 2017.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). These AGs apply to all adjudicative decisions issued on or after June 8, 2017, and they supersede the AGs that Applicant received with the SOR.¹ Any changes resulting from the issuance of new AGs did not affect my decision in this case.

Request for Administrative Notice

In Item 5, the Government requested that I take administrative notice of certain facts about Afghanistan. Without objection, I have taken administrative notice of certain facts contained in the requests that are supported by source documents from official U.S. Government publications. These facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted all the SOR allegations, ¶¶ 1.a through 1.m, with explanations. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 27 years old. He was born in Afghanistan in 1990. He first worked with United States armed forces in Afghanistan as a "local combat translator" or linguist, from 2006 to 2008. He came to the United States in 2009 on a refugee visa. (Items 3, 4; AE A)

From about June 2010 to April 2014, Applicant worked as a linguist and a role player for various defense contractors. From December 2011 to April 2014, he was deployed to Afghanistan with United States armed forces. He left the industry and returned to the United States to attend community college for about three months, in the fall of 2014. (Item 3)

¹ The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

Applicant became a naturalized U.S. citizen in December 2014. He submitted a security clearance application in March 2015, in connection with his resumed employment as a linguist. He is currently deployed overseas. (Items 3, 4; AE A)

The SOR concerns Applicant's numerous immediate and extended family members who are citizens and residents of Afghanistan. They include his wife, her parents, his mother, father, stepmother, four brothers, six sisters, one stepbrother, and two stepsisters. (SOR ¶¶ 1.a-1.j) His stepbrother is employed by the Afghan Ministry of Public Health (SOR ¶ 1.l)² and a cousin is a colonel in the Afghan Army. (SOR ¶ 1.m) Since 2009, Applicant has sent about \$100,000 to his family members in Afghanistan. (SOR ¶ 1.k) Applicant provided updated information about his family members when he answered the SOR, and when he responded to the Government's FORM. (Items 1, 2; AE A)

Applicant married his wife (¶ 1.a) in May 2014. She was working as a school teacher in Afghanistan. Applicant maintained daily contact with her and sent her \$100 a month. Applicant asserted in his FORM Response that she is now living in the United States, and plans to remain. He asserted that his mother, age 51 (¶ 1.b), has also relocated to the United States. (Items 2, 3; AE A)

Applicant's father, age 77 (¶ 1.c), a retired taxi driver, and his stepmother (¶ 1.d), remain in Afghanistan. Applicant asserted that his father will soon relocate to the United States. His stepmother's immigration status is unknown. (Items 2, 3; AE A) Applicant has daily contact with his wife, and speaks with his parents two or three times a week. He speaks with his stepmother once a month. (Item 2)

Applicant has four brothers and six sisters remaining in Afghanistan. (¶¶ 1.e, 1.f) One brother works for the U.S. military. Two brothers are in college, and one is in grade school. Two of his sisters are married, and the four younger sisters are in school. Applicant keeps up with his siblings through his parents. (Item 2)

Applicant has a stepbrother and two stepsisters who are citizens and residents of Afghanistan. (¶¶ 1.g, 1.h) His stepsisters are married. Applicant has infrequent contact with them. (Item 2)

Applicant's stepbrother is employed by the Afghan ministry of public health. (¶ 1.i) Applicant speaks to him twice a month. (Item 2) In his FORM Response, Applicant also stated that he maintains contact with an older brother, who is a doctor in public health, in Afghanistan. (AE A)

Applicant's mother-in-law and father-in-law (¶¶ 1.i, 1.j) are also citizens and residents of Afghanistan. Applicant speaks with them every month or two. The frequency of his wife's contact with them is unknown. Applicant has a cousin who is a

² SOR ¶ 1.l alleges that it is one of Applicant's brothers, rather than his stepbrother, who is employed with the Afghan Ministry of Public Health. (Item 1)

colonel in the Afghan Army. (¶ 1.m) Applicant has not had contact with him for over four years. (Item 2)

Applicant began sending money to his family in 2009. His father was retired, and his younger brothers were all in school. Applicant felt a cultural responsibility to support his family as the oldest male. Since then, he has sent his family about \$100,000. (¶ 1.k) He also leased a house for his family to live in, for over \$45,000. (Item 2) There is no indication that Applicant owns any property or other assets in Afghanistan. In his FORM Response, Applicant noted that he has a house in the United States. (AE A)

Applicant stated that he has worked closely alongside the U.S. military on dangerous combat missions in remote areas of Afghanistan. His life has been in danger during enemy attacks. He stated that his language skills have saved the lives of American soldiers and civilians. He has a deep respect for the American people and for the U.S. Army. (AE A)

With his answer, Applicant provided letters of recommendation from several soldiers he has served with in Afghanistan. They attested to his professionalism, loyalty, and dedication to the mission. One reference requested that his parents receive expedited processing of their immigrant visa applications because they did not feel safe in Afghanistan given Applicant's involvement with the U.S. military. Applicant also provided several certificates of appreciation and achievement for his service and hard work in difficult circumstances both during deployments and in training. (Item 2)

The Islamic Republic of Afghanistan (Afghanistan)³

The United States Department of State warns U.S. citizens against travel in Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. Travel to all areas of Afghanistan remain unsafe due to the ongoing risk of kidnapping, hostage-taking, military combat operations, landmines, banditry, armed rivalry between political and tribal groups, militant attacks, direct and indirect fire, suicide bombings and insurgent attacks, including attacks using vehicle-borne or other improvised explosive devices. Attacks may also target official Afghan and U.S. government convoys and compounds, foreign embassies, military installations, and other public areas. Extremist groups and members of other armed opposition groups are active throughout the country, attacking Afghan and foreign government facilities, with little regard for civilian casualties.⁴ Afghanistan continued to experience aggressive

³ Item 5. Several of the Government's administrative notice documents have since been updated by the State Department. I take administrative notice of certain more recent (but largely similar) facts consistent with my obligation to make assessments based on timely information in cases involving foreign influence.

⁴ <https://travel.state.gov/content/passports/en/alertswarnings/afghanistan-travel-warning.html> (U.S. State Department Travel Warning for Afghanistan, dated Mar. 21, 2017).

and coordinated attacks by the Taliban and other insurgent and terrorist groups. A number of these attacks were launched from safe haven for terrorists in Pakistan.⁵

Afghanistan has significant human rights problems, including widespread violence, attacks on civilians and killing of persons affiliated with the government by armed insurgent groups; torture and abuse of detainees by government forces; widespread disregard for the rule of law; and little accountability for those participating in human rights abuses; as well as targeted violence and societal discrimination against women and girls.⁶

Policies

It is well established that no one has a right to a security clearance.⁷ As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”⁸

The adjudicative 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 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. 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. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

⁵ <https://www.state.gov/j/ct/rls/crt/2016/272233.htm> (U.S. State Department 2016 Country Report on Terrorism for South and Central Asia, published in July 2017).

⁶ <https://www.state.gov/documents/organization/265742.pdf> (U.S. State Department 2016 Human Rights Report for Afghanistan, published in March 2017).

⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

⁸ 484 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 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 an applicant may deliberately or inadvertently fail to 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 Exec. Or. 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.”

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding 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 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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; 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 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.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.”⁹

Applicant has numerous immediate and extended family members who are citizens and residents of Afghanistan. This includes his father, his stepmother, all his brothers and sisters, a stepbrother, two stepsisters, his wife’s parents, and a cousin. Applicant has a brother and a stepbrother who are employed by the Afghan Ministry of Public Health. His cousin is a colonel in the Afghan Army.

Afghanistan’s continued instability, the ongoing threat of violence from terrorist organizations, extremist groups and members of other armed insurgents, and the country’s serious ongoing human rights issues, all create a “heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Given Applicant’s strong ties and frequent contact with his many family members in Afghanistan, AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(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

⁹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

(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.

Applicant has regular, frequent contact with his wife and his parents. Through his parents, he maintains contact with his siblings. He speaks to his stepbrother every other week. He has monthly contact with his stepmother. He has less frequent contact with his stepsisters. However, Applicant unquestionably has a strong bond with his numerous family members in Afghanistan, since he has provided them significant financial support for several years and regularly inquires about their well-being. AG ¶ 8(c) does not apply, except as to his cousin, the colonel in the Afghan Army, with whom Applicant has had no contact in four years.

The foreign influence concerns in this case are increased because of Afghanistan's continuing instability and the persistent threat of terrorism and violence by armed insurgents. Applicant himself has a heightened understanding of the security risks in Afghanistan, given his service as a linguist with U.S. forces in the Afghan theater of operations for several years. Nevertheless, the fact remains that he might be subject to exploitation, coercion, or duress through his close relationship with his family in the event they are subjected to foreign pressures. In light of the matters accepted for administrative notice, AG ¶ 8(a) has limited applicability.

Applicant's ties to Afghanistan are ongoing, even though his wife and mother have now immigrated to the United States. He still maintains strong ties to his family there, as they rely on him for financial support. Notwithstanding Applicant's service to the United States in difficult, dangerous, even life-threatening circumstances, there is insufficient evidence to conclude there is no conflict of interest, either because Applicant's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or Applicant has such deep and longstanding relationships and loyalties in the United States, that he can be expected to resolve any conflict of interests in favor of U.S. interests. Applicant has not met his heavy burden of persuasion in establishing that AG ¶ 8(b) applies to his circumstances.

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.

Under AG ¶ 2(a), 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 have incorporated my comments under Guideline B in my whole-person analysis. Applicant did not provide sufficient information to meet his burden of persuasion to mitigate the foreign influence security concerns due to his family connections to Afghanistan. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline B, foreign influence.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.l:	Against Applicant
Subparagraph 1.m:	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 security interests of the United States to grant Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge