



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 16-01734
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2017

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 and has repeatedly placed his personal safety at risk in support of the U.S. mission in Afghanistan. U.S. military officers who have worked with Applicant vouch for his reliability, honesty, conscientiousness in handling and safeguarding sensitive U.S. information, and loyalty to the United States. Clearance is granted.

Statement of the Case

On June 30, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging that Applicant's connections to his relatives in Afghanistan, including the financial support he provides them, raise a security concern under the foreign influence guideline. Applicant answered the SOR and requested a decision on the administrative (written) record.

On October 24, 2016, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant six exhibits (Items 1 – 6) that the Government offers for admission into the record. Applicant submitted a response to the FORM on November 13, 2016. With his Response, Applicant submitted documents related to his former

marriage and reference letters from U.S. military officers who have served with him in Afghanistan (Exhibits A – E).

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 offered by the parties are admitted into the record.

Findings of Fact

Applicant was born in Afghanistan. After graduating from high school in 2007, Applicant was hired by a U.S. Government (USG) contractor as a translator. He then served as a translator for U.S. military units operating in Afghanistan for the next three years. He immigrated to the United States in approximately September 2010, and subsequently became a naturalized U.S. citizen. He has worked for USG contractors both in the United States and in Afghanistan, directly supporting the U.S. mission in Afghanistan for the past decade. He surrendered his Afghan passport to his facility security officer in 2015.¹

Applicant's parents and his younger siblings remain in Afghanistan. Applicant is working on helping them immigrate to the United States. His older brother was also hired by a USG contractor to work as a translator for the U.S. military, and also immigrated to the United States. Before his recent assignment to Afghanistan, Applicant lived with his brother, who continues to work as a USG contractor, and his brother's wife in the United States. Applicant and his older brother financially support their parents and younger siblings. Applicant estimates that since 2011, he has given his family about \$300 to \$500 a month. As of April 2015, his financial support to his family in Afghanistan totaled about \$19,000. Applicant's parents are retired and his younger siblings are students. None of his family members have any connection to the Afghan government or any hostile group operating within Afghanistan. He reports that his tribe supports the U.S. military's effort in Afghanistan.²

Applicant has been vetted by the U.S. military in connection with his current and past USG contract jobs. He had interviews with U.S. military counterintelligence investigators in 2012, 2014, and 2015. He also was vetted by U.S. immigration authorities in 2014 in connection with his U.S. citizenship application. He disclosed his foreign connections and contacts, including his foreign family members, during these past investigations. He discussed his foreign connections and other aspects of his background with a security clearance investigator in 2015.³

As of November 2016, Applicant had been working as a translator in Afghanistan for 18 months. His duties included translating high-level discussions between U.S. military officers and their Afghan partners. He has also been entrusted with translating sensitive

¹ Items 2 – 5.

² Items 2, 4, 5; Response.

³ Item 5.

documents. Applicant is well-respected for his abilities, reliability, and honesty. He is sought after by U.S. military units for his skill and reliability. He is thought of as a critical team member by the U.S. military officers who have worked with him. His job description was recently changed and he now requires a security clearance to continue working as a translator for U.S. and coalition forces.⁴

One of his former U.S. military supervisors, an O-5, writes that he never questioned Applicant's loyalty and reliability. He would routinely discuss sensitive U.S. military operations and information in Applicant's presence without concern.⁵ An O-6, who is the former Director of Logistics for U.S. operations, writes that she never had concerns about assigning Applicant to translate high-level meetings because he is a skilled interpreter and is conscientious in the manner he handles the sensitive information he learned at these meetings.⁶ Another U.S. military officer writes, in pertinent part, that :

Regardless of what has been asked of [Applicant] over the last decade, [he] has been ready, willing, and able to support the U.S. military personnel with his linguistic skills, experience, and knowledge. He has been a loyal, generous, competent, honest, and a hardworking member for each and every team he works. He has put his own safety, as well as the safety of his family at risk, and stepped forward to support his team members whenever they asked for his assistance. He has convoyed all over dangerous territories, flown in and out of hot zones, worked arduous hours, walked and traveled wearing full battle rattle, and traveled all over the world to accomplish the mission. He has been side-by-side with American service members on combat missions and has sacrificed everything he had known to become an American citizen. His integrity, his perseverance, and his record demonstrate his exemplary character. [Applicant] has manifested his dedication to American values, beliefs, culture, and mission goals in the nine years of excellent service and support he has provided.⁷

Administrative Notice - Afghanistan.⁸

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.

⁴ Response; Exhibits A – E.

⁵ Exhibit D.

⁶ Exhibit C.

⁷ Exhibit B at 2.

⁸ See *generally* Item 6; as updated by current information contained in Appellate Exhibit I (publically-available U.S. State Department documents).

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 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, ¶ E3.1.32.1.⁹

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.)

A person is not automatically disqualified from holding a security clearance because they have relatives living in a foreign country. Instead, in assessing an individual’s potential vulnerability to foreign influence, a judge considers the foreign country involved, the country’s human rights record, and other pertinent factors.¹⁰

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

⁹ 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 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).

¹⁰ 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).

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 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.”¹¹ However, what factor or combination of factors may mitigate security concerns raised by an applicant with foreign relatives is not easily identifiable or quantifiable.¹² 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.¹³

¹¹ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

¹² ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

¹³ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

Here, Applicant's relationship to his family members residing in Afghanistan is not casual and the risk posed by his connection to them 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 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.

However, no one is more acutely aware of the dangers posed by his work than Applicant. For over 10 years now, Applicant has demonstrated his loyalty to the United States. He was hired by the USG right out of high school and from 2007-2010 was employed as a linguist by the U.S. military in Afghanistan. After immigrating to the United States and finding gainful employment in the states, Applicant volunteered to return to Afghanistan and once again face those risks – at times, side-by-side with U.S. military members in combat situations. He has demonstrated his reliability, trustworthiness, and conscientious in handling and safeguarding sensitive information. In light of the overwhelming record evidence, Applicant can be expected to 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 any 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,¹⁴ 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
Subparagraphs 1.a – 1.f:	For Applicant

¹⁴ 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).

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