



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



In the matter of:)	
)	
)	ISCR Case No. 16-02692
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Hale, Esq., Department Counsel
For Applicant: *Pro se*

02/1/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated foreign influence security concerns raised by siblings and in-laws who are residents and citizens of Afghanistan. His brother is in the process of receiving his U.S. visa. His sister and in-laws prefer to live in Afghanistan. His past behavior demonstrates he can resolve any potential conflict of interest in favor of the United States. His undivided allegiance to the United States is corroborated by his dependability and performance while under enemy fire and facing grievous harm. U.S. military officers who served with him in Afghanistan endorse his eligibility for a security clearance. Additionally, he has developed deep and long-lasting bonds in the United States. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 7, 2014. Government investigators interviewed Applicant on July 15 and 22, 2014. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) on September 17, 2016, issued a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence). Applicant answered the SOR on October 10, 2016, and initially requested a decision based on the written

record. Applicant later requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on January 19, 2017. DOHA issued a notice of hearing that same day, scheduling a hearing for January 26, 2017. At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant objected to the admissibility of GE 2 (a summary of Applicant's unauthenticated July 22, 2014 interview). I sustained the objection. GE 2 was marked and made part of the record, but I did not consider it as evidence. Applicant testified, presented the testimony of his supervisor (an active duty Army lieutenant colonel), and submitted exhibits (AE) 1 through 26. All of Applicant's exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on February 3, 2017.

Procedural Issue

Applicant requested an expedited hearing. At hearing, Applicant stated he had had sufficient time to prepare, was ready to proceed, and affirmatively waived his right to 15-days advanced notice of his hearing. (Tr. 15-18)

Department Counsel requested I take administrative notice of facts concerning Afghanistan. (GE 4) There were no objections, and I took administrative notice of facts concerning Afghanistan as noted in the decision.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.a, 1.b, and 1.e. He admitted the SOR factual allegations in ¶¶ 1.c, 1.d, and 1.f. His admissions to the SOR and at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 30-year-old linguist, translator, and consultant. He has worked for U.S. armed forces and federal contractors on and off since he was 16 years old. His periods of employment with federal contractors include: November 2003 through October 2008; December 2008 through February 2009; and April 2010 through December 2013. Applicant's current employer and clearance sponsor hired him in June 2014. Applicant was born, raised, and educated in Afghanistan. He attended an Afghan university for about two years, but did not complete a degree.

At his hearing, Applicant presented the testimony of one witness, submitted six reference letters, and twelve certificates of appreciation. The witness, a U.S. Army active duty lieutenant colonel (LTC F), supervised Applicant for about a year while deployed to Afghanistan. LTC F testified that Applicant has displayed total loyalty and dedication to the U.S. forces he has served with in Afghanistan. Applicant served embedded with LTC F's unit as well as with U.S. Special Forces units and teams performing missions all over the area of operations. Applicant is trusted with his

translations and was assigned as translator to important personnel and high ranking officers. LTC F recommended Applicant get a higher clearance so that he can be more valuable to the command.

Applicant testified that between 2003 and 2014, he was involved in over 100 dangerous missions where he and the U.S. Special Forces were under grave danger from enemy fire, ambushes, and improvised explosive devices. (Tr. 64-67) (LTC F's testimony partially confirmed his testimony.) On one occasion, he suffered a broken leg. Additionally, Applicant and his family were in danger because of his work as a translator for U.S. forces. Local nationals threatened and pursued Applicant and his family and burned his car. Because of the open threat, Applicant's one-star commander recommended Applicant for a special immigrant visa. In 2008, Applicant immigrated to the United States pursuant to a special immigrant visa issued to him because of his job as an interpreter for U.S. forces. He became a naturalized U.S. citizen in 2014.

Applicant's references are from U.S. officers and noncommissioned officers who were members of teams deployed to Afghanistan. The gist of their testimony is that Applicant demonstrated exceptional skills and ability as an interpreter. He proved to be extremely valuable to the U.S. forces and gained the trust and confidence of his references. Most of the references endorsed Applicant's eligibility for a security clearance. (AE 1-6) The twelve certificates of appreciation speak highly of Applicant's outstanding performance, dedication, and professionalism, which contributed to the mission accomplishment of the U.S. forces. (AE 7-18)

The SOR alleged that Applicant's parents, two brothers, and three sisters are residents and citizens of Afghanistan. It also alleged that Applicant provided financial support to his parents. Applicant's parents immigrated to the United States in 2014 and currently have permanent residency in the United States. (AE 21-22) Applicant's father owns a home in Afghanistan that he plans to sell in the near future to purchase a home in the United States. Applicant no longer sends money to Afghanistan because his parents are living with his brother in the United States. Applicant has no financial or proprietary interests in Afghanistan.

Applicant's wife and two children are naturalized U.S. citizens residing with Applicant in the United States. Applicant has two older brothers that are U.S. citizens living in the U.S. (AE 19-20) Two of Applicant's sisters were granted visas and currently are residents of the United States. (AE 23-24) Applicant's only close family members in Afghanistan are his younger brother (pending an interview to finalize the approval of his visa), and an older sister. His younger brother works for a U.S. contractor in the U.S. embassy in Afghanistan. He is pending the approval of his U.S. visa. His sister is happily married to an Afghan and they have six children. She does not plan to immigrate to the United States.

Applicant's parents-in-law and one brother-in-law are still residents and citizens of Afghanistan. They have a lucrative family business and do not plan to immigrate to

the United States. His wife's sister is a naturalized U.S. citizen, married to an American, and resides in the United States.

Applicant credibly testified that neither he, nor his wife or children, intend to return to live in Afghanistan. He and his family are very happy to be living in the United States and they enjoy the peace and quality of life they have in the United States. Applicant stated: "it is my privilege to serve the U.S. forces . . . this country gave me a lot . . . my citizenship . . . peace . . . and safety for me and my family." (Tr. 48) Applicant vowed to continue working for U.S. forces as much as he can. He is looking forward to helping soldiers in the ground. While working for U.S. forces in Afghanistan, Applicant came under weapons fire (mortar, rifle, rifle propelled grenades (RPGs)) numerous times, and was the victim of an improvised explosive device. Applicant credibly testified that he would resolve any possible conflict of interest in favor of the United States.

I take administrative notice of the following facts concerning Afghanistan. The State Department warns U.S. citizens against travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. Travel to all areas of Afghanistan remains 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 (IEDs). Attacks may also target official Afghan and U.S. governmental convoys and compounds, foreign embassies, military installations, and other public areas.

Extremists associated with various Taliban networks, the Islamic State of Iraq and the Levant-Khorasan Province (ISKP) and members of other armed opposition groups are active throughout the country. ISKP has shown its operational capability, having attacked both Afghan and foreign government facilities. The Taliban and its affiliates (the Haqqani Network) routinely conduct high profile attacks and assassinations against U.S., Coalition, and Afghan interests, particularly in Kabul and other key government centers, with little regard for civilian casualties.

The border region of Afghanistan and Pakistan remains a safe haven for terrorists. It is an under-governed area that terrorists exploit to conduct attacks in both countries. Terrorist groups active in Afghanistan, such as al-Qa'ida (AQ) and others, operate in Afghanistan and Pakistan. ISIL-Khorasan (ISIL-K) is largely based in Afghanistan, but its support network also reaches into Pakistan's tribal areas along the border. The Afghan government has struggled to assert control over this remote terrain where the population is largely detached from national institutions.

Although al-Qa'ida's core leadership in the Afghanistan-Pakistan border region has been degraded, elements continue to seek safe haven on both sides of the border to regenerate and conduct attack planning. The continued development of an al-Qa'ida affiliate in the region (al-Qa'ida in the Indian Subcontinent (AQIS)), highlights the

dynamic nature of the terrorist and militant landscape of the region, posing risks to the mission and to U.S. interests.

The most significant human rights problems in Afghanistan during 2015 were widespread violence, armed insurgent groups' attacks on civilians and killing of persons affiliated with government, torture and abuse of detainees by government forces, widespread disregard for the rule of law, and little accountability for those who conduct human rights abuses, as well as targeted violence and societal discrimination against women and girls.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

While the case was pending a decision, the Security Executive Agent implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, which replaced the 2006 AG. I decided this case under the current AGs implemented by SEAD 4.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The foreign influence security concern is explained at AG ¶ 6:

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.¹

An individual is not automatically disqualified from holding a security clearance because they have connections and contacts in a foreign country. Instead, in assessing an individual’s potential vulnerability to foreign influence, an administrative judge must take into account the foreign government involved; the intelligence-gathering history of that government; the country’s human rights record; and other pertinent factors.²

The serious security threat posed by terrorists and other elements hostile to the United States operating within Afghanistan must be taken into account in assessing the security concerns raised by Applicant’s familial connections and other interests in

¹ ISCR Case No. 09-07565 at 3 (App. Bd. Jul. 12, 2012) (“As the Supreme Court stated in *Egan*, a clearance adjudication may be based not only upon conduct but also upon circumstances unrelated to conduct, such as the foreign residence of an applicant’s close relatives.”) (internal citation omitted).

² ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

Afghanistan Applicant's relationship to these foreign relatives, coupled with the facts administratively noticed, raise a heightened security concern.

In assessing the security concern raised by Applicant's foreign contacts and interests, I have considered the following disqualifying and mitigating conditions:

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;

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 ¶ 7(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;

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, group, organization, or government and the interests of the U.S.;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(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.

An individual with family members and other connections 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."³ However, what

³ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

factor or combination of factors will mitigate security concerns raised by an applicant with family members in a foreign country is not easily identifiable or quantifiable.⁴

In the present case, Applicant has two siblings, parents-in-law, and a brother-in-law who are residents and citizens of Afghanistan. His brother is in the process of receiving his U.S. visa. His sister is happily married with six kids and prefers to live in Afghanistan. His in-laws have a profitable business and will continue to live in Afghanistan. All of Applicant's remaining close family members (parents, siblings, wife, children, and his sister-in-law) live in the United States and they are not subject to possible foreign coercion or harm.

Furthermore, Applicant has a long track record of resolving potential conflicts of interest raised by his relatives in Afghanistan and his fiduciary responsibilities in favor of U.S. interests. Since 2003 (at age 16), Applicant has worked for U.S. contractors and service members in Afghanistan assuming great risks and danger to him and his family. In the face of death threats to him and his family, and attacks on his property, Applicant faced down those threats and maintained his loyalty and fiduciary obligations to the United States.

Applicant, with the encouragement of his family and his U.S. forces' friends, remained loyal to the United States, reported the threats, and continued his work and responsibilities to the United States. Applicant immigrated to the United States because of the threats and attacks on him and his family in 2008. Notwithstanding, he has continued to serve the U.S. forces on other Afghanistan missions and would like to continue working for U.S. forces in the future.

Applicant's testimony that he would report any attempted coercion or threats, and that he would resolve any potential conflict in favor of the United States, is fully supported by his long and distinguished track record of doing so. His undivided allegiance to the United States is corroborated by his dependability and performance while under enemy fire and facing grievous harm. U.S. military officers who served with him in Afghanistan endorse his eligibility for a security clearance.⁵ Additionally,

⁴ ISCR Case No. 11-12202 at 5 (App. Bd. Jun. 23, 2014).

⁵ ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008) ("Generally, an Applicant's statements, by themselves, as to what he would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant's proven record of action in defense of the U.S. is very important and can lead to a favorable result for an applicant in a Guideline B case. In this case, Applicant has served the U.S. military as a translator in dangerous circumstances in Afghanistan and has risked his life to protect American personnel there.) See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) ("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 purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. 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

Applicant has developed deep and long-lasting bonds in the United States, as evidenced by the reference letters and his witness' testimony. Applicant's past behavior demonstrates his ability to resolve any potential conflict of interest in favor of the United States even under enemy fire and facing grievous harm.

Accordingly, after a complete and thorough review of the record evidence, and while remaining mindful of my duty to resolve any unmitigated doubt in favor of protecting national security, I find that Applicant mitigated the security concerns raised by his connections to and contact with his family in Afghanistan.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guideline B in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 30-year-old employee of a federal contractor. He has worked for U.S. forces in Afghanistan on and off since 2003 when he was 16 years old. He established an excellent reputation for his knowledge, cultural expertise, and linguistic abilities. He is considered to have exceptional skills and abilities as an interpreter.

Moreover, Applicant is considered to be a highly-trusted employee, who is reliable, dependable, and a loyal American. He accompanied U.S. forces on numerous military missions where he risked his life and faced the enemy shoulder to shoulder with his U.S. forces' companions and friends. His references, U.S. military personnel who served with him in Afghanistan, endorsed his eligibility for a security clearance without reservations.

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.f:	For Applicant

which the applicant had made a significant contribution to the national security. 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.") (internal citations omitted).

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge