



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



In the matter of:)
)
) ISCR Case No. 17-01401
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: Ronald Payne, Personal Representative

02/12/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

Statement of the Case

On July 26, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 16, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 22, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 27, 2017. I convened the hearing as scheduled on January 17, 2018. The Government

offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibit (AE) A. There were no objections to any of the exhibits offered, and they were admitted into evidence. I held the record open until February 7, 2018, to allow Applicant to submit additional documents, which he did. They were marked AE B through D. There was no objection, and they were admitted into evidence.¹ DOHA received the hearing transcript on January 24, 2018.

Request for Administrative Notice

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about Afghanistan. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.² The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.b, 1.c, and 1.f. He denied the allegations in SOR ¶¶ 1.d and 1.e. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He was born in Afghanistan. He completed high school and attended college for one year, and did not earn a degree. He served his mandatory conscription in the Afghan military from 1989 to 1990. He was a clerk. He married in 1997 in Afghanistan. He has four children from the marriage, ages 18, 16, 12, and 10 years old. Applicant has been employed by his present employer, a federal contractor, since October 2016.³

In 2007, Applicant applied for a Special Immigration Visa. He moved to the United States in 2008 and became a naturalized citizen in 2013. Applicant's wife, mother, and four children are citizens and residents of Afghanistan. They live in a village near the Pakistan border. Applicant has been providing between \$600 and \$1,200 a month for his mother, wife and children's daily needs. He began sending the money to his father in approximately 2008 to support both of his parents and Applicant's wife and children. His father passed away in 2016. He now sends the money to his brother to support their mother and Applicant's wife and children. He explained that it would be unusual for a woman to go to the bank in Afghanistan. All of his children attend school in Afghanistan. He speaks with his mother once or twice a week. She does not work. His wife is a homemaker. He talks to her once or twice a week. He last visited his family in Afghanistan in June 2016. His wife has applied to the U.S. Government for a visa to move to the United

¹ Hearing Exhibit II is Department Counsel's email memorandum.

² Source documents are attached to Hearing Exhibit I.

³ Tr. 21-23.

States. Applicant stated it is being processed. Applicant talks to family and children on the phone, through the Internet, and on social media.⁴

Applicant has seven sisters. One sister is a British citizen residing in London. Another sister is a citizen of Holland, residing in London. A third sister is a permanent resident of the United States. Her husband was a linguist and she immigrated to the United States. The remaining four sisters are citizens and residents of Afghanistan. They are all homemakers and live in the same village as Applicant's wife and children. He has varying contact with them, sometimes once every two, three, or six months depending on when he speaks with his children and if they are nearby. He does not provide financial support to his sisters. Two have husbands who are taxi drivers. One's husband is deceased, and another is a storeowner. Applicant's speaks to his sisters' husbands occasionally.⁵

Applicant has three brothers. One is a pharmacist, who is a citizen of Afghanistan and lives in the same family compound where Applicant's family lives. He looks after Applicant's family. It is this brother whom Applicant sends money to support Applicant's family. He talks with his brother at various time. His second brother lives in the United States and is a permanent resident. His third brother is a citizen and resident of Afghanistan serving as an Army officer in the Afghan military. Applicant speaks with this brother about every five to six months. His brother is aware that Applicant works for U.S. forces, but he stated his brother does not know the details of Applicant's work.⁶

Applicant's parents-in-law are citizens of Afghanistan and live close to Applicant's family compound in Afghanistan where his wife and children live. Neither of them work. Applicant last spoke with them about seven months ago. He has infrequent contact with them, but if they are present when he contacts his wife or children, he will talk with them. Their sons support them. Applicant testified that his parents-in-law are unaware of the type of work he does.⁷

Applicant has supported U.S. forces in Afghanistan since 2005 at various times. In his Electronic Questionnaire for Investigation Processing (e-QIP) he disclosed he worked as a linguist in Afghanistan for federal contractors from March 2005 to September 2006; February 2007 to April 2008; March 2010 to April 2011; and September 2011 to November 2012. He lived and worked in the United States when not in Afghanistan doing various jobs. When he returned to Afghanistan in March 2010 he voluntarily resigned in April 2011, so he could be with his family for five months from April 2011 to September 2011. He has been working in Afghanistan since beginning work in October 2016 with his

⁴ Tr.24-29, 57, 61.

⁵ Tr. 29-35, 39.

⁶ Tr. 33-35, 58.

⁷ Tr. 35-36.

present employer. He was not permitted to visit his family while working in Afghanistan for federal contractors.⁸

While in the U.S. Applicant stays in a hotel. He does not own property in the U.S. and does not rent an apartment while here. In 2014, he purchased a store in the U.S. as an investment. The business failed, and he returned to working as a linguist so he could support his family. He estimated he has approximately \$80,000 to \$100,000 in his U.S. bank account. He does not own any property or have a bank account in Afghanistan. Applicant intends to permanently reside in the United States.⁹

Applicant has loyally served as a linguist for U.S. forces in Afghanistan. He has served during combat missions and been subjected to hostile fire. He does not discuss his work with any of his family. They do not know where he resides when he is working. He is committed to protecting U.S. interests. He provided letters of appreciation for his work with U.S. forces in Afghanistan.¹⁰

Afghanistan¹¹

The United States Department of State's travel warning for Afghanistan remains in effect and it warns U.S. citizens against travel there because of continued instability and threats by terrorist organizations against U.S. citizens. Travel there is unsafe due to ongoing risk of kidnapping, hostage-taking, military combat operations, and armed rivalry between political and tribal groups, militant attacks, suicide bombings, and insurgent attacks. These attacks may also target Afghan and U.S. Government convoys and compounds, foreign embassies, military installations, and other public areas.

Extremists associated with various Taliban networks, the Islamic State in Iraq and Syria (ISIS), and members of other armed opposition groups are active throughout the country. These terrorist groups routinely attack Afghan, coalition forces, and U.S. targets with little regard for or the express intent to cause civilian casualties. Due to security concerns, unofficial travel to Afghanistan by U.S. Government employees and their family members is restricted and requires prior approval from the State Department.

Afghanistan continues to experience aggressive and coordinated attacks by different terrorist groups. These groups remain active and were able to conduct a number of high-profile, mass-casualty attacks in Kabul against sectarian and Afghan government targets. They continue to plan such attacks against U.S. and coalition forces and Afghan interests. Border regions of Afghanistan and Pakistan remain safe havens for terrorists. The Afghan government struggles to assert control over this remote region.

⁸ Tr. 43-53, 56; GE 1.

⁹ Tr. 53-56, 61-65.

¹⁰ Tr. 36-39; AE A, B, C, D.

¹¹ HE I.

According to a June 2017 U.S. Department of Defense report on Afghanistan, Afghanistan faces a continuing threat from as many as 20 insurgent and terrorist networks present and operating in the Afghanistan-Pakistan region, in what is the highest concentration of extremist and terrorist groups in the world.

The State Department's report on human rights for Afghanistan notes there was widespread violence, including indiscriminate attacks on civilians and killings of persons affiliated with the government by armed insurgent groups, widespread disregard for the rule of law and little accountability for those who committed human rights abuses. There was also targeted violence and endemic societal discrimination against women and girls.

Afghanistan remains an important partner of the United States in the fight against terrorism, working with the U.S. to eliminate terrorist groups. The U.S. Government continues to invest resources to help Afghanistan improve its security, governance, institutions, and economy. The U.S. Government has a strong bilateral partnership with the Afghan government.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These 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(c), 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. Directive ¶ E3.1.15 states 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."

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 EO 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

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 resulted 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 it 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;

(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; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a) and 7(e) require evidence of a “heightened risk.” The “heightened risk” required to raise these disqualifying conditions is a relatively low standard. “Heightened risk” 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.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The United States Department of State warns U.S. citizens against travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. It also has serious concerns about terrorist activities in Afghanistan that specifically target Americans. Extremists associated with various Taliban networks, ISIS, and members of other armed opposition groups are active throughout the country. These terrorist groups routinely attack Afghan, coalition forces, and U.S. targets. Border regions of Afghanistan and Pakistan remain safe havens for terrorists. The Afghan government struggles to assert control over this remote region. The State Department’s report on human rights for Afghanistan notes there was widespread violence, including indiscriminate attacks on civilians and killings of persons affiliated with the Government by armed insurgent groups, widespread disregard for the rule of law and little accountability for those who committed human rights abuses.

Applicant’s wife, four children, mother, two brothers, four sisters and his parents-in-law are citizens and residents of Afghanistan. Applicant visits his family in Afghanistan for several months at a time when he is not employed with a U.S. contractor. He has applied for U.S. visas for his wife and children, but that process has not concluded. He provides financial support for his mother, wife, and children. Applicant’s family residing in Afghanistan creates a heightened risk and a potential foreign influence concern. AG ¶¶ 7(a), 7(b), and 7(e) apply.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the nature of the relationship 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 and interests of the U.S.;

(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 interests in favor of the U.S. interests; and

(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's family, which includes his mother, wife, four children, two brothers, four sisters, and parents-in-law are citizens and residents of Afghanistan. He visits his family for months at a time. He has weekly contact with his mother, wife, and children and provides financial support for them. He sends the money to his brother. His family lives together in a family compound. Applicant's contact with his family is not casual and infrequent. AG ¶ 8(c) does not apply.

I have considered Applicant's close relationship with his family in Afghanistan. It is an unsafe place for those residing there, and especially for U.S. citizens. Terrorism and human rights abuses for people living there are rampant. These groups conduct kidnappings and hostage-taking. Terrorist groups in Afghanistan target U.S. citizens. I cannot find that it is unlikely that Applicant would be placed in a position of having to choose between his wife and children, mother, siblings and his wife's parents and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has been a U.S. citizen since 2013. He returns to Afghanistan and stays for months to visit his family. He is obviously a devoted husband, father, son, and brother. He provides financial support for his mother, wife and children. Although he has applied for visas for his wife and children, that process has not been completed or approved.

I have considered Applicant's loyalty, devotion, and commitment when working with U.S. and coalition forces in Afghanistan over the years. I have considered that he participated in high-risk, dangerous combat operations and has received letters of appreciation for his commitment. I believe Applicant is loyal to the United States. However, Afghanistan continues to have significant terrorist activity that specifically targets both Afghans and Americans. Applicant's close relationship with his family in Afghanistan, his visits to see his family, and his financial support for them is commendable. His familial ties are not minimal. It is too great of a burden to expect him to be loyal to the interests of the United States and resolve any conflicts in favor of the United States over those of his wife, children, mother, siblings and his wife's parents. AG ¶ 8(b) does not apply.

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):

Under AG ¶ 2(c), 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.

Applicant is 46 years old and has been a naturalized U.S. citizen since 2013. He has strong family ties with his wife, children, mother, siblings, and his wife's parents who are citizens and residents of Afghanistan. I have given considerable weight to Applicant's service to the United States forces in Afghanistan under combat conditions and during critical operations. His commitment and loyalty to the United States is noted, but it is not outweighed by his familial obligations and loyalty to those closest to him. It is too great a burden to expect him to resolve a conflict of interest in favor of the United States instead of his family. The heightened risks raised by familial ties in Afghanistan continue to raise security concerns under Guideline B, foreign influence and are unmitigated. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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:

Subparagraphs 1.a-1.f: Against 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 to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge