



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



In the matter of:

ISCR Case No. 17-01756

Applicant for Security Clearance

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro Se*

03/30/2018

Decision

Heintzelman, Caroline E., Administrative Judge:

Applicant mitigated the security concerns arising from his continuing family connections in Afghanistan. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

History of Case

On July 24, 2012 and March 21, 2017, Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP). On July 25, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The DOD acted under Executive Order (EO) 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 (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all decisions on or after June 8, 2017.

Applicant answered the SOR in writing on August 2, 2017 (Answer), and requested his case be decided on the written record in lieu of a hearing. On September 27, 2017, a complete copy of the File of Relevant Material (FORM), containing 12 Items, was mailed to Applicant and received by him on October 6, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not object to the Government's Items. Hence, Items 1 through 12 are admitted into evidence without objection. He submitted additional evidence, which was admitted without objection as Applicant's Exhibit (AX) A. The case was assigned to me on February 12, 2018.

Administrative Notice

I took administrative notice of facts concerning Afghanistan. Those facts are set forth in the following: Government's Request for Administrative Notice for Afghanistan, marked as Item 12. These documents are included in the record. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 37 years old, and he was born in Afghanistan. In 2008, he received a bachelor's degree from a university in Turkey. In May 2009, he entered the United States and in June 2012, he became a naturalized U.S. citizen. He has been married since 2007. His wife entered the United States in approximately 2001 and sponsored Applicant's citizenship. Their daughter was born in the United States in 2011. Shortly after he emigrated, Applicant started working as a translator and as a role-player.¹ Since July 2012, Applicant has worked for his current employer and he has held a clearance. He continues to require a clearance for his position as a cultural advisor.²

Applicant's father is a shopkeeper and his mother is a housewife (Items 2 and 3). His brother, four of his five sisters, and three of his four brothers-in-law are citizens and residents of Afghanistan. None of his family members are employees or affiliated with the Afghan government. Since 2012, Applicant has deployed to Afghanistan four times supporting U.S. troops.³ He maintains contact with all of his foreign family members, but speaks with his parents most frequently. He has not seen any of his family members in almost eight years. Finally, over the past nine years, he has sent his parents approximately \$12,000 (Item 7).

¹ Applicant worked in the U.S. as a translator between April and September 2010. He also worked as a role player between January and July 2012 (Item 5).

² Item 1 and AX A.

³ Applicant deployed to Afghanistan from July 2012 to November 2012; August 2013 to February 2014; December 2014 to May 2015; and June 2015 to May 2016 (Item 10). When he was not deployed to Afghanistan, he continued to work as a translator, linguist, and role player.

Applicant and his wife purchased a home in the United States two years ago (Item 4). His wife's parents are permanent residents of the United States. Additionally, one of his five sisters, her husband, and their children are permanent residents of the United States. Applicant's friend is no longer employed by the Afghan military (Item 1 and AX A). He is a permanent resident of the U.S. and is married to an American citizen.

Applicant has worked for the U.S. government for six years, holding a clearance, and has not had any security problems or issues. He affirms he would resolve any conflict of interest in favor of the U.S. government (Item 1 and AX A).

Afghanistan

Afghanistan is a country in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia in the north. It is a rugged and mountainous country, which has been fought over by powerful nations for centuries. It has about 18 million people. Afghanistan is presently an Islamic Republic that has had a turbulent political history, including an invasion by the Russians in 1979. After an Accord was reached in 1989 and Russia withdrew from the country, fighting continued among the various ethnic, clan and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic Government took power in 2004 after a popular election. Despite that election, various terrorist networks and the Taliban continue to assert power and intimidation within the country. Terrorist bombings, tribal rivalry, suicide bombings, and kidnapping and hostage takings continue to occur in Afghanistan.

According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. There are high profile attacks and assassinations against U.S. Coalition and Afghan interests. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence.

The country's human rights record remains poor and violence is widespread, including indiscriminate attacks on civilians by armed insurgent groups. Human trafficking, sexual exploitation of women and minor girls and boys continues, and prostitution occurs regularly. There are also many reports of rape, torture, and other abuses by officials, security forces, detention center authorities, and police (Item 12).

Policies

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is set out in 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.

The guideline includes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has ongoing and commendable familial connections with his parents, siblings, and their families, who are residents and citizens of Afghanistan. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Afghanistan may threaten Applicant and his family, as they may seek intelligence or engage in behaviors that are hostile to the United States' interests. Applicant's relationships with his relatives also create a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help family members living in Afghanistan. The evidence and Applicant's admissions are sufficient to raise these disqualifying conditions.

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 of this case:

(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

(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 lived in the United States for nine years and has worked for the U.S. government for six years. He stated he would resolve any conflict of interest in favor of the United States. AG ¶ 8 (a) and (b) are established based on his past performances, his U.S. citizenship, the fact that his daughter, wife, sister and her family, and his wife's family all reside in the U.S., there is no evidence his family members in Afghanistan have ever been contacted or pressured by any terrorist group or the Afghan government, and there is no evidence he has been a security threat.

Generally, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying circumstances. However, where an applicant has established by credible, independent evidence that his or her compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to the national security, such circumstances give credibility to an applicant's assertion that he or she will recognize, resist, and report a foreign power or terrorist's attempts at coercion or exploitation. In this case, Applicant has a track record of complying with security regulations and procedures in high-risk circumstances in which he made contributions to national security. See ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008); ISCR Case No. 06-25928 at 4 (App. Bd. Apr 9, 2008).

Applicant's contact with his parents cannot be considered casual or infrequent. His contact with his siblings is not casual, but it is also not frequent. AG ¶ 8 (c) is not fully established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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 have incorporated my comments under Guideline B in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal and commendable results of his family situation. There is mitigating evidence weighing in favor of granting Applicant a security clearance. He is a mature and intelligent person, who has lived in the United States during the past nine years, and has been a naturalized citizen since 2012. His spouse and child are U.S. citizens. His sister and her family also emigrated from Afghanistan to the United States. In his employment, from 2012 to present, he has provided direct support to the U.S. armed forces as a linguist, translator, and professional cultural advisor. There is no evidence that he has ever taken any action that could cause potential harm to the United States.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his foreign family members. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a through 1.g:

For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

Caroline E. Heintzelman
Administrative Judge