



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



In the matter of:)
)
) ISCR Case No. 17-02684
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2018

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 September 8, 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 September 21, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) and it was received by Applicant on November 28, 2017. He was afforded an opportunity to file objections and submit material

in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 3. Applicant provided a response to the FORM with additional documents that are marked Applicant Exhibits (AE) A through O. There was no objection to any of the evidence and Items 1 through 3 and AE A through O are admitted. The case was assigned to me on February 14, 2018.

Request for Administrative Notice

In the FORM Department Counsel requested 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 and those that were provided with the FORM. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He was born in Afghanistan and became a naturalized citizen of the United States in April 2014. From 2007 to April 2010, he lived at his family's house in Afghanistan and again from October 2014 to December 2016. From April 2010 to October 2014, he worked and lived on American military compounds in Afghanistan. Since December 2016, he has resided at a friend's house in the United States. He earned an associate's degree in 2016.¹

Applicant disclosed in his Electronic Questionnaire for Investigation Processing (e-QIP) that he worked as a linguist for a federal contractor from 2007 to October 2014. He left his employment because the contract ended, and he took time off to be with his family in Afghanistan. He disclosed he was unemployed from October 2014 until January 2017, when he started his present employment with a federal contractor.²

Applicant married in Afghanistan in 2002. He and his wife have eight children, all of whom are under the age of 14 years. Applicant's wife and their children are citizens and residents of Afghanistan. Applicant provided a copy of an American visa that was issued to his wife in October 2017 and it expired on February 28, 2018. Applicant indicated his intent to bring his wife and children to the United States in January 2018. It is unknown if that occurred and their current immigration status is also unknown. He and

¹ Item 3. It is unknown if there is a discrepancy in the information Applicant provided in his e-QIP when he listed that he worked for U.S. forces from 2007 to 2014 and lived with his family in Afghanistan from 2010 to October 2014.

² Item 3.

his wife communicate daily, and he communicates with his children weekly. She is aware that he works in Afghanistan, but not the specific location or the details about his work.³

Applicant provides monthly financial support for his family in Afghanistan. He maintains about \$500 in a jointly-held Afghani bank account with his wife. He estimated he has provided approximately \$35,000 in financial support since 2005. No other information about Applicant's finances were provided. It is unknown if he owns property in Afghanistan or in the United States. It is unknown if he has other assets in the United States and/or in Afghanistan.⁴

Applicant's mother, father, one brother, three sisters, father-in-law, and mother-in-law are citizens and residents of Afghanistan. His mother is a housewife and his father is self-employed as a farmer. He also has a brother who is a citizen of Afghanistan residing in the United States and attending college here. His other brother works at a convenience store in Afghanistan. Applicant disclosed he has monthly telephonic contact with his parents and both brothers. He lists his sisters as housewives. He disclosed he has in-person contact in Afghanistan with them annually. His last contact with one sister was in January 2015 and with the other two was in December 2016. His sisters' husbands' occupations are unknown. He disclosed his father-in-law is disabled and a self-employed farmer, and his mother-in-law is a housewife. He has contact with them in-person annually. His last visit was October 2016. It is unknown if Applicant provides financial support for any of these family members. Applicant indicated in his SOR answer that his family does not know the nature or location of his employment beyond that it is in Afghanistan. He believed that his family does not cause him to have divided loyalties and his relationship with them cannot be used to coerce him into assisting foreign powers.⁵

In Applicant's response to the FORM, he stated he was unaware of the potential security concerns of having foreign family members. He noted that he is responsible as a father and husband to take care of his family. He does not believe his contact with his family in Afghanistan jeopardizes his loyalty to the United States. He explained that culturally it is expected that he support his parents and maintain contact with his siblings. He noted the difficulty in ceasing such relationships. He stated he has begun to decrease his contact with his parents and siblings. He explained he has been an active, loyal, and trusted person within the teams he supported for the United States while in Afghanistan.⁶

Applicant provided letters of appreciation that reflect his loyalty and service to the American forces in Afghanistan. The letters describe him as a valuable team member always ready to assist in facilitating liaisons with the U.S. forces and Afghan partners and in high profile engagements with senior Afghan officials and leaders. One commanding

³ Item 2; AE A.

⁴ Item 2; AE A.

⁵ Item 2; AE A.

⁶ AE A

officer wrote: “[Applicant] has undertaken duties at considerable risk to his own life and that of his family who live in Kabul. Interpreters are known to be consistently targeted by anti-government and terrorist elements operating in Afghanistan, to include Kabul.”⁷ He was described as the consummate professional who was critical to the success of the mission. He was described as respectful, dedicated, committed, exceptional, and intelligent.⁸

Afghanistan⁹

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.

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.

⁷ AE I.

⁸ AE B-L, N, and O.

⁹ FORM.

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 suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (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 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 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) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition 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 is 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, eight children, parents, brother, three sisters, and his parents-in-law are citizens and residents of Afghanistan. Applicant lived with his wife and children in Afghanistan for extended periods when he was not employed by the U.S. Government. As a good husband and father, he provides his wife and children financial support. He and his wife maintain a joint bank account in Afghanistan. He maintains monthly contact with his parents and brother living in Afghanistan, and lesser contact with his sisters and parents-in-law. His wife had a U.S. visa, but it is unknown whether she and the children have concluded the immigration process and are living in the United States. It is Applicant's intention that they do so. Applicant's family residing in Afghanistan creates a heightened risk and a potential foreign influence concern. The second of Applicant's brothers lives in the United States, and is a citizen of Afghanistan. The concern is less with him, but without additional information regarding his immigration status, travels to Afghanistan, and other intentions, I find there is also 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:

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 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 wife, eight children, mother, father, brother, three sisters, and parents-in-law are citizens and residents of Afghanistan. His other brother is a citizen of Afghanistan and attends school in the United States. Applicant visited his family in Afghanistan and stayed at the family house for extended periods when he was not working for the U.S. military. He has lived in the United States since December 2016. He has daily contact with his wife and weekly contact with his children. He has regular contact with his parents and brothers, and less contact with his sisters and parents-in-law. He provides financial support to his wife and children. It is unknown if he also provides financial support to other family members. 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, parents, 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 2014. He spends time with his family in Afghanistan when he is not working for the United States, although he has lived in the United States since December 2016. He is obviously a devoted husband, father, son, and brother. Although his wife obtained a U.S. visa and he intended for her and the children to move to the United States, it is unknown if that process has been completed and approved. In addition to Applicant's wife and children, he has regular contact his parents, siblings, and in-laws, albeit less.

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 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 extended

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, parents, siblings and his wife's parents. AG ¶ 8(b) does not apply.

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(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.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 38 years old and has been a naturalized U.S. citizen since 2014. He has strong family ties with his wife, children, parents, siblings, and his wife's parents who are citizens and residents of Afghanistan. He also has strong ties with one brother who is currently living in the United States and is a citizen of Afghanistan. I have given considerable weight to Applicant's service to the United States forces in Afghanistan under dangerous conditions and during critical operations. His commitment and loyalty to the United States is noted, but it is not outweighed by his strong 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

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.m: 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