



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



In the matter of:)
)
) ISCR Case No. 17-03148
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Sean Bigley, Esq., Applicant's Counsel

November 27, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On October 2, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on November 29, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 6, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 6, 2018, scheduling the hearing for March 1, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 3, which were admitted without objection, and GX 4 for Administrative Notice. Applicant testified on his own behalf. Applicant presented one packet of documents, which I marked

Applicant's Exhibits (AppX) A, which was admitted without objection. DOHA received the transcript of the hearing (TR) on March 8, 2018.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Islamic Republic of Afghanistan (Afghanistan). Department Counsel provided a five-page summary of the facts, supported by four Government documents pertaining to Afghanistan. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to the allegations of the SOR, except for SOR ¶¶ 1.c, 1.d, 1.f, and 1.n., as these distant cousins no longer live in Afghanistan. (TR at page 30 lines 18~25, and at page 31 line 1 to page 33 line 3.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since June of 2017 as an interpreter. (TR at page 34 line 23 to page 35 line 1.) He was married to a U.S. citizen, but is now divorced and has no children. (GX 1 at pages 24~25.)

Guideline B – Foreign Influence

Applicant's father and brother, who were farmers, were killed in 2010 by the Taliban when he "was working for with the UN (United Nations)." (TR at page 14 line 16 to page 15.) Applicant believes they were killed because "he refused to provide them [the Taliban] with information." (TR at page 14 line 16 to page 17 line 19.) Applicant fled Afghanistan, soon thereafter, to Switzerland, where he was granted asylum. (TR at page 18 line 4 to page 22 line 11.) Applicant married a U.S. national in 2012; and as a result, immigrated to the United States. (*Id.*, and GX 1 at page 24.) He became a U.S. citizen in 2016. (GX 1 at page 8.)

1.a and 1.b. Applicant's elderly mother and remaining brother are citizens and residents of Afghanistan. (GX 1 at pages 26~29.) They are farmers. (TR at page 17 line 20 to page 18 line 3, and at page 26 line 4 to page 27 line 4.) His mother and brother would also willingly sacrifice their lives, as did his father and deceased brother, before giving in to the demands of the Taliban. (*Id.*) Applicant would honor their wishes. (TR at page 17 line 20 to page 18 line 3, and at page 26 line 4 to page 27 line 4.)

1.c.~1.n. (1.c. and 1.f., and 1.k and 1.m. are duplicate entries involving distant cousins) Except for the cousin listed in 1.k., Applicant has very little contact with his distant cousins. He listed them on his Counterintelligence-Focused Screening Questionnaire (GX 3.) in an abundance of caution. (TR at page 29 line 2 to page 30 line

11.) As to his cousin listed in allegation 1.k., his “off and on contact . . . is limited to the phone.” Applicant “sent him money a couple of times . . . probably \$150 or \$200 max.” (*Id.*) Suffice it to say, that Applicant would not be subject to coercion vis-à-vis one of his distant cousins, as he proved with the deaths of both his father and brother

Notice

I take administrative notice as to the following facts regarding Afghanistan: The U.S. Department of State advises against all travel to Afghanistan due to crime, terrorism, civil unrest, and armed conflict. In 2016, insurgents across Afghanistan used a variety of tactics to expand their territorial influence, disrupt governance, and create a public perception of instability. No province in Afghanistan should be considered immune from violence.

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 to be 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, administrative judges apply the guidelines 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. According to AG ¶ 2(a), 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the “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 who applies for access to classified information 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 access to classified information. 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 information.

Section 7 of Executive Order (EO) 10865 provides that adverse 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

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 notes 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.

Applicant's mother and brother are citizens and residents of Afghanistan. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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 proven that he is not subject to possible coercion as evidenced by the deaths of his father and brother. He, and his mother and brother, are willing to continue that sacrifice. As to his distant cousins, his contact is minimal, at best. Guideline B is found for Applicant.

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 relevant 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 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 those guidelines, but some warrant additional comment. Applicant is a highly regarded and respected interpreter, working for U.S. interests in Afghanistan, as evidenced by six letters of support. (AppX A.) One very laudatory letter of support is from a U.S. Army Colonel who serves with Applicant in Afghanistan. (AppX A at page 1.)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a~n:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge