



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



In the matter of:)
)
) ISCR Case No. 17-03744
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, but mitigated the Guideline B, foreign influence concerns. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On January 9, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and B. The DOD CAF acted under Executive Order 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), effective June 8, 2017 (AG).

Applicant answered the SOR on January 27, 2018, 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) on June 11, 2018. The evidence included in the FORM is identified as Items 3-7 (Items 1 and 2 include pleadings and transmittal information, and Item 8 is a request for administrative notice on Afghanistan). The FORM was mailed to Applicant, who received it on June 29, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections, but submitted exhibits (AE) A-E which are admitted without objection. Items 3-7 are also admitted into evidence without objection. The case was assigned to me on October 11, 2018.

Procedural Ruling

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Afghanistan. Applicant did not object and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as Item 8. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the SOR allegations except for ¶ 1.h. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

The SOR alleged Applicant is indebted on charged-off and collection accounts in the total amount of \$23,782 (SOR ¶¶ 1.a – 1.i). The SOR also alleged Applicant's parents, three brothers, and one sister are citizens and residents of Afghanistan. It also alleged that Applicant provides approximately \$1,500 annually to his mother (SOR ¶¶ 2.a- 2.c).

Applicant is 35 years old. He was born in Afghanistan in 1972. He relocated to the United States in 2007. He became a naturalized U.S. citizen in 2014. He attended high school in Afghanistan and college in the United States. He worked for a defense contractor as a linguist from 2002 to 2007. From 2007 to 2016, Applicant worked as a role player and a security guard for different federal contractors. He also experienced periods of unemployment (September 2012-October 2014; September 2011-June 2012; October 2008-February 2009; November 2007-August 2008). The record contains no evidence that Applicant has property or other assets in the United States.¹ He is single with no children.²

¹ Items 4-6 (credit reports do not show mortgage loans or a current car loan).

² Items 3-6.

Foreign Influence

Applicant has the following relatives who are residents and/or citizens of Afghanistan:

1. His parents. His father is in his mid-60s and is unable to work because of medical conditions. His mother is in her late 50s and is a housewife who also takes care of her husband. They live in Kabul. They are not affiliated with the Afghan government. Applicant has monthly, or once every two months, contact with his parents through social media.³

2. Applicant's three brothers and one sister. His three brothers are younger and all are university students. His sister is in high school. None of his brothers or sisters knows what he does for a living or where he works. None of his siblings have any Afghan government connections. Applicant's contact with his siblings ranges from monthly to once every two months.⁴

Applicant admitted supplying his mother approximately \$200-\$300 five to six times a year. He explained that it was customary to provide his aging parents financial assistance. His other siblings also assist with financial aid to their parents. Applicant sends the money using Western Union.⁵

Afghanistan

A U.S. State Department travel warning remains in effect for Afghanistan. Extremists associated with various Taliban networks, the Islamic State of Iraq and Levant, and members of other armed opposition groups are active throughout the country. Afghanistan continues to experience aggressive and coordinated attacks by the Taliban and other terrorist groups. The border region between Afghanistan and Pakistan remains a safe haven for terrorists. The country's most significant human-rights concern during 2015 was widespread violence, armed insurgent groups' attacks on civilians, and killing of persons affiliated with the government.⁶

Financial Considerations

During his November 2016 background interview with a defense investigator, Applicant admitted all the SOR debts (including the debt he denied in his answer, ¶ 1.h). He further stated that he intended to pay all the debts by May 2017. He failed to fulfil this commitment by May 2017. In April 2018, Applicant entered into an agreement with

³ Item 2; AE E.

⁴ Item 2; AE E.

⁵ Item 2; AE E.

⁶ Item 8.

a debt relief company (DRC) to settle some of his SOR debts. Under the terms of the agreement, Applicant is to pay \$288 monthly for 48 months and the DRC will negotiate settlements on the five entered debts (three credit card debts, one rental debt, and one telephone provider debt totaling approximately \$16,129). As of July 2018, he paid one debt (insurance debt for \$164), had settled one debt (telephone provider debt of \$552 settled for \$221); he made two of twelve payments toward a credit card debt; and had made no payments on the remaining three debts. There is no evidence of payment or that a payment plan was established for six of seven debts that were not included in the DRC plan. With the exception of SOR ¶¶ 1.f and 1.k, Applicant's debts are unresolved.⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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

⁷ GE 7; AE B, D-E.

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 about 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

¶ 7: The security concern relating to the guideline for foreign influence is set out in AG

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.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying 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 family member living in Afghanistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this

factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship of Afghanistan with the United States places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Afghanistan do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Afghanistan who might be coerced by terrorists or other governmental entities.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."⁸ Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives or terrorists from Afghanistan seek or have sought classified or economic information from or through Applicant, or his relatives living in Afghanistan, it is not possible to rule out such a future possibility. As demonstrated by his regular contacts with his family and his payments to his mother, he continues to feel an obligation to them and affection for them. Applicant's concern for his relatives is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation.

AG ¶¶ 7(a) and 7(b) apply because of Applicant's relationships with his relatives who are living in Afghanistan. Applicant communicates with these relatives on a regular basis. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Applicant has not attempted to rebut this presumption. Given Afghanistan's fragile security situation, Applicant's relationships with his relatives living in that country are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion."

⁸ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns:

(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.; and

(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.

AG ¶ 8(a) does not apply. Applicant's current linguist position could cause him to be placed in a position to choose between the interests of his relatives and those of the United States. However, Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He moved to the United States in 2007, gained citizenship in 2014, and currently resides in the United States. Additionally, he volunteered to go into harm's way to serve as a linguist for U.S. forces in Afghanistan beginning in 2002. The evidence supports that Applicant has longstanding loyalties toward the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a trustworthiness concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant had periods of unemployment, which are conditions beyond his control, he failed to act responsibly when he did not timely address his debts. Applicant hired a DRC to assist him in settling five debts. This was not financial counseling per se, but I give Applicant some credit for taking this action. However, that credit is minimized by the length of time it took him to enter such an arrangement. The DRC only dealt with five of Applicant's eleven debts. There is no evidence indicating payments or action taken on the remaining debts. Even the debts within the DRC plan showed limited payment. All of the mitigating conditions partially apply, but because of Applicant's late and limited payments, they do not fully mitigate the financial concerns.

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. The circumstances tending to support denying Applicant's clearance are more significant than the factors weighing towards granting his clearance. I considered the ties he established in this country and his service as a linguist in a hostile environment, thereby demonstrating his longstanding loyalty to this country. Applicant provided sufficient evidence to mitigate the foreign influence security concerns. However, Applicant failed to produce sufficient evidence showing that he has taken appropriate action to deal with his financial issues. I considered his periods of unemployment. However, he waited until four months after the issuance of the SOR to contract with a DRC. Even then, less than half his debts were incorporated into the payment plan. His financial issues remain a concern.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, although Applicant mitigated the foreign influence security concerns, I conclude he failed to mitigate the financial considerations security concerns

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 F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge