



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



In the matter of:)
)
) ISCR Case No. 17-03765
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

06/04/2018

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 December 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 December 30, 2017, and requested a hearing before an administrative judge. The case was assigned to me on March 28, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 29, 2018. I convened the hearing as scheduled on April 16, 2018. The Government offered

exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibit (AE) A and B. There were no objections to any of the exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on April 24, 2018.

Request for Administrative Notice

Department Counsel submitted Hearing Exhibits I and II, written requests that I take administrative notice of certain facts about Afghanistan and Iran. Applicant did not object, and I have taken administrative notice of the facts contained in the requests that are supported by source documents from official U.S. Government publications.¹ The facts are summarized in the Findings of Fact, below.

Findings of Fact

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

Applicant is 49 years old. He was born in Afghanistan. He completed high school there. He never married and has no children. He moved to the United States in 2000 and became a naturalized citizen in 2008. He testified that he renounced his Afghan citizenship. He has worked part-time for federal contractors in the United States from approximately 2003 to 2011, as a cultural advisor and role player. He has been employed by his current employer since September 2017.²

Applicant moved from Afghanistan in 1980 because the government wanted him to enter military service. He went to Pakistan as a United Nations refugee. He was in Iran for a period, Turkey for six months, Syria for five to six years, and Lebanon for eight to nine years. He eventually was granted entry into the United States through a United Nations refugee program.³

Applicant moved back to Afghanistan from July 2011 to April 2013, because he wanted to visit his family, to find a job with the U.S. Army, and potentially open a business. He worked in a bakery while there. In 2011, he opened a bank account in Afghanistan in case a business enterprise worked out. He took \$45,000 with him from his U.S. account. When he left Afghanistan he transferred the money back to his U.S. bank. He continues to maintain a bank account in Afghanistan, but estimated there is only \$100 in it.⁴

¹ Source documents are attached to Hearing Exhibits III and IV.

² Tr. 19-20, 27-28, 45-46, 74-75; GE 1, AE B.

³ Tr. 49-51.

⁴ Tr. 42-47, 63-70; AE A.

Applicant has three sisters, who are citizens of Afghanistan and residents of Iran. They moved there in approximately 1995 as refugees. They are all married to Afghan citizens and are housewives. One husband is retired, one is self-employed, and the other works in the fitness business. He explained his sisters moved to Iran during the Afghan civil war. In the past, he provided them some financial support, but has not done so for about ten years. In 2011, his sisters traveled from Iran to Afghanistan while he was living in Afghanistan to visit with him. He stated his sisters' children missed him. So he visited them in Iran in 2013 for about six weeks. He testified that he applied for an Afghan passport, so he could visit his sisters in Iran. He could not visit them using a U.S. passport. He testified that he now has minimal contact with one sister, which is about every two to three years. The other two he has contact with every three to four months by telephone. Applicant traveled on his Afghan passport at the time.⁵

Applicant's stepmother is a citizen and resident of Afghanistan. He has not had contact with her since 2013, when he saw her in Afghanistan. He does not provide her financial support.⁶

Applicant has five half-brothers who are citizens and residents of Afghanistan. He had some contact with them when he was living in Afghanistan from 2011 to 2013, but has not had contact since then. They work in a small business or are taxi drivers. He has a half-sister who is a citizen and resident of Afghanistan. He had some contact with her when he lived there. She is married. He has not had contact since 2013.⁷

Applicant has five male cousins and four female cousins who are citizens and residents of Afghanistan. He has contact with two men and two women cousins. One woman cousin, who is like a sister, he contacts every two weeks by telephone. One of his male cousins is in the Afghan military. He contacts him about twice a month and occasionally sends him money. Another male cousin has a small business, and Applicant contacts him once or twice a month. Another cousin he contacts every couple of months. One female cousin lost her husband and has three children. Applicant sends her money to help with expenses. He testified that he sends his cousins money as they need it, but primarily sends it to two of them. He last visited these cousins in 2013.⁸

Applicant owns undeveloped land in the United States. He also owns a car and has about \$11,000 in savings, but no other assets. He testified that he may return to Afghanistan in the future to live, but for now he will remain in the United States.⁹

⁵ Tr. 28-42, 44-48.

⁶ Tr. 51-53.

⁷ Tr. 53-57.

⁸ Tr. 57-63.

⁹ Tr. 71-73, 77.

Applicant provided certificates and letters of appreciation from employers. It was noted that he participated in multiple military training events where he played different roles as an Afghan citizen, which contributed greatly to the overall success of the exercise. His expertise in the Afghan culture and interaction with service members was considered priceless and essential to the mission. Applicant's expertise, professionalism and outstanding service were applauded.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.

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.

¹⁰ Tr. 24-25; AE B. Applicant noted that he had about 50 character and reference letters, but he only provided a representative sample to be admitted into evidence.

¹¹ HE I.

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.

Iran¹²

Iran has been designated as a State Sponsor of Terrorism since 1984. It remains the most prominent state sponsor of terrorism, providing financial aid, advanced weapons and tactics, and direction to militant and terrorist groups across the Middle East. It cultivates operatives across the globe as a contingency to enable potential terrorist attacks.

Iran uses terrorist groups to implement foreign policy goals, provide cover for intelligence operations, and create instability in the Middle East. It remains an enduring threat to the U.S. national interests. Iran and its primary terrorism partners pose a persistent threat to the United States and its partners worldwide. The U.S. Government does not have diplomatic ties or consular relations with Iran. The Department of State warns U.S. citizens not to travel to Iran due to the risk of arbitrary arrest and detention.

Iran continued to leverage cyber espionage, propaganda, and attacks to support its security priorities, influence events and foreign perceptions, and counter threats—including against U.S. allies in the region. The U.S. Director of National Intelligence (DNI) has identified several countries, including Iran as posing a significant cyber threat against the United States. The DNI specifically noted that Iran will continue to penetrate U.S. and allied networks for espionage and to position itself for potential cyber-attacks. There is also concern that Iran will expand its influence in the region and will develop military capabilities that threaten U.S. forces.

In 2015, the Visa Waiver Program was amended. Under the amendment, citizens of Iran, Iraq, Sudan and Syria are ineligible to travel or be admitted to the United States. The exclusion of these countries from waiver eligibility reflects that the presence of an individual in that country increases the likelihood that the individual is a credible threat to the national security of the United States, that a foreign terrorist organization has a significant presence in the country; or that the country is a safe haven for terrorists.

Iran has a poor human rights record. There are severe restrictions on civil liberties, including freedom of assembly, association, speech, religion, and the press. Other problems include abuse of due process combined with the use of capital punishment for crimes that do not meet requirements for due process, as well as cruel, inhuman, or degrading treatment and punishment; and disregard for the physical integrity of persons, whom authorities arbitrarily and unlawfully detained, tortured, or killed. There are numerous other human rights problems in Iran.

¹² HE II

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
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶¶ 7(a) and 7(f) 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.

Applicant maintains a small balance in a bank account in Afghanistan. The amount held in the account does not rise to the level of a substantial financial interest in a foreign

country. AG ¶ 7(f) does not apply. However, the existence of the bank account will be considered when analyzing the whole-person, and Applicant's ties to Afghanistan.

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 U.S. Department of State warns U.S. citizens against travel to Afghanistan and Iran because of continued instability and threats by terrorist organizations against U.S. citizens. It also has serious concerns about terrorist activities in both countries. Extremists associated with various Taliban networks, ISIS, and members of other armed opposition groups are active throughout Afghanistan and terrorist threats are equally a serious concern in Iran.

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. Iran remains the most prominent state sponsor of terrorism, providing financial aid, advanced weapons and tactics, and direction to militant and terrorist groups across the Middle East. Both Iran and Afghanistan have serious human rights issues.

Applicant three sisters are citizens of Afghanistan and have resided in Iran since the 1990s. Applicant maintains contact with them and has visited them in Iran after becoming a naturalized citizen of the United States. He returned to Afghanistan from 2011 to 2013, and his sisters traveled there to visit him.

Applicant has an ongoing relationship with his cousins who are citizens and residents of Afghanistan. He is closer to some of his cousins than others. He provides two of them occasional financial support. He contacts some of them regularly.

Applicant's stepmother is a citizen and resident of Afghanistan. He has five half-brothers and a half-sister who are citizens and residents of Afghanistan. He has not had any contact with them since 2013. He did have contact with his half-siblings when he was living in Afghanistan. He does not know if in the future he will return to Afghanistan to live. This uncertainty raises concerns that he may rekindle his relationship with his half-siblings and stepmother. Applicant's family residing in Afghanistan and Iran creates a heightened risk and a potential foreign influence concern. AG ¶¶ 7(a) and 7(b) 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, includes his sisters who are citizens of Afghanistan and reside in Iran. His step-mother, half-siblings, and cousins are citizens and residents of Afghanistan. He stays in contact with his sisters and some cousins. His sisters traveled from Iran to Afghanistan to visit him when he was living in Afghanistan. He also obtained an Afghan passport so he could visit them in Iran. They maintain telephonic contact. Applicant stays in contact by telephone with some of his cousins in Afghanistan. He occasionally sends financial support to two of them. Applicant testified he has not seen his stepmother or step-siblings since 2013. He stated that when he lived there he had more contact with them. He also testified that he did not know at this time whether he would move back to Afghanistan in the future. Because of this uncertainty, it is unknown whether he would reestablish ties with these family members. Applicant's contact with some of his family may be infrequent, but it is not casual. Insufficient evidence was produced to apply AG ¶ 8(c).

I have considered Applicant's close relationship with his sisters in Iran and his cousins in Afghanistan. It is an unsafe place for those residing in either country, and especially for U.S. citizens. Terrorism and human rights abuses for people living in both countries 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 sisters, cousins, and other relatives and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has been a U.S. citizen since 2008. He returned to Afghanistan from 2011 to 2013 where he worked. He obtained an Afghanistan passport so he could travel to Iran to visit his sisters. His sisters traveled from Iran to Afghanistan to visit him because their children missed him. He helps his family financially. He is obviously devoted to his family.

I have considered Applicant's loyalty, devotion, and commitment when working with federal contractors in the United States in support of missions conducted in

Afghanistan. I have considered his contributions, letters of recommendation, and certificates of appreciation stating that Applicant is loyal to the United States. However, Afghanistan and Iran continue to have significant terrorist activity that specifically targets both Afghans and Americans. Applicant's close relationship with his family in Afghanistan and Iran, his visits to see the family, and his financial support for them is commendable. He took the extraordinary effort to obtain an Afghan passport so he could travel to Iran to visit his sisters and their families. 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 family. 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 46 years old and has been a naturalized U.S. citizen since 2008. He has strong family ties with his sisters and cousins in Iran and Afghanistan. I have given considerable weight to Applicant's service and commitment to the United State, but it is not outweighed by his deep familial ties and loyalty to his siblings and cousins in Afghanistan and Iran. 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 and Iran continue to raise security concerns under Guideline B, foreign influence, and remain 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.f:	Against Applicant
Subparagraph 1.g:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge