



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



In the matter of:)
)
) ISCR Case No. 15-00179
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

02/24/2016

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 15, 2014. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on August 22, 2015, detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR. He submitted a notarized, written response to the SOR allegations dated September 7, 2015, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on December 4, 2015. Applicant received the FORM on December 17, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He timely submitted a response before the due date of January 16, 2016. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on February 18, 2016. The Government submitted five exhibits, which have been marked as Items 1-5. Items 1 through 4 are admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to Afghanistan. The request and the attached documents were not admitted into evidence, but were included in the record as Item 5, a hearing exhibit. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and they are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.d of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.e of the SOR.¹ He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 52 years old, works as a linguist for a DOD contractor. He began his current employment in May 2014. He was unemployed from December 2013 until May 2014. He previously worked as a linguist for another DOD contractor from

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

June 2012 until December 2013 when the DOD contract ended, and his employer laid him off. He worked as a truck driver March 2001 until June 2012.²

Applicant submitted a letter of recommendation from his current military oversight representative, an Army special agent. She recommends him for a security clearance. She described him as a “great asset” to an intelligence department in Afghanistan because of his interpersonal and communication skills. He is an intelligent and hard-working individual, whose cultural advice and valuable linguistic skills increased their team productivity. He also submitted a letter of recommendation from an Australian army officer who advised that Applicant’s interpretation and translation efforts directly aided the saving of Coalition Force and local Afghan national lives. He also submitted a certificate of appreciation and certificate of authenticity.³

Applicant was born and raised in Afghanistan. At age 18, he volunteered to serve in the Afghan Air Force, eventually becoming a helicopter pilot. In 1989, Applicant defected to the United States from the Afghan Air Force with a Russian helicopter. He requested asylum, which the United States granted him. He became a naturalized citizen in February 2001. He currently holds a U.S. passport and has since February 2001. He travels on his U.S. passport.⁴

Applicant married in 1989. His wife was born and raised in Afghanistan. She is a United States citizen, residing in the United States. They have five children, ages 16, 11, 9, 8, and 3. His oldest child was born in Pakistan, resides in the United States, and holds a permanent resident card. His other four children are United States citizens by birth and reside in the United States.⁵

Applicant’s father, father-in-law, and two brothers are deceased. His 86-year-old mother and 71-year-old mother-in-law are citizens and residents of Afghanistan. Both are housewives, who have never worked. He does not support either. He talks with his mother by telephone once a month and with his mother-in-law at least twice a year. Applicant has eight sisters, whose ages range from 61 years to 37 years. They are housewives, who are busy raising their children. His four living brothers are ages 54, 50, 47, and 40. Two brothers are farmers; one brother is a grocer; and one brother is a medical doctor working at an American clinic in Afghanistan. All his living siblings are citizens and residents of Afghanistan. His siblings’ spouses and their numerous children are also citizens and residents of Afghanistan. A review of the documentation in the record indicates that his family members live in rural areas or villages, not in large cities. Applicant talks to his siblings at least twice a year. His telephone conversations with his mother, brothers and sisters focuses on family matters, such as health and well-being of

²Item 3 (e-QIP).

³AE A.

⁴Item 3; Item 4 (CounterIntelligence-Focused Security Screening Questionnaire).

⁵Item 3.

them and their children. He denies talking with his family members about his current job. He does not provide financial support for his family members. Applicant does not have contact with other Afghan nationals.⁶

Afghanistan

I take administrative notice of the following adjudicative facts. Afghanistan is an Islamic Republic and emerging democracy. With the support of the United States and other nations, its new government endeavors to build a new system of government and to rebuild the country's infrastructure. Its Army and police force are well trained. It continues to face significant challenges from the insurgency and terrorist organizations supported by the ousted Taliban, Al Qa'ida, and the Haqqani Network. Security and violence remain a serious issue. The government is not complacent about the terrorist threat, the insurgency, or security issues; rather it actively seeks to eliminate all with the assistance of the United States and NATO. The new government is working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community, has signed a "Good Neighbor" declaration with six nations bordering it, and promotes regional cooperation. The United States supports the emergence of a broad-based government in Afghanistan and has made a long-term commitment to help Afghanistan rebuild itself. Sometime ago, the leaders of both countries concluded a strategic partnership agreement committing to a long-term relationship between both countries, which was signed on May 2, 2012. Despite its differences with the United States, Afghanistan continues to seek U.S. support as it moves forward towards democracy and stability. None of the documents offered in support of the request for administrative notice indicate whether Afghanistan is an active collector of U.S. intelligence information.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(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,

⁶Item 2; item 3; AE A.

⁷Item 5.

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 access to classified information 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, 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. . . .” An applicant has the ultimate burden of persuasion for 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 an 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 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 may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

- (a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's wife and children are citizens and residents of the United States. Thus, no security concern is raised by these family members. Applicant's elderly mother, four brothers, eight sisters, mother-in-law, and extended family are citizens and residents of Afghanistan. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members in Afghanistan must be considered in deciding whether to grant Applicant a clearance.⁸ Applicant's family members may create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or could create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members, particularly if they are threatened by terrorists. These factors must be considered when determining if a heightened risk exists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his extended family, as well as the activities of the Government of Afghanistan and of terrorist organizations within Afghanistan. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his extended family in Afghanistan raise a heightened risk and a security concern because of the terrorists activities in Afghanistan, especially the Taliban. The evidence of record fails to show that the Afghan Government targets U.S. citizens in the United States or in Afghanistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Afghan Government will seek classified information is moderate. The same cannot be said about the terrorists organizations operating in Afghanistan, whose goals are to destroy or prevent the growth of a stable, central Afghan government.⁹

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Afghanistan cause security concerns,

⁸ISCR Case No. 09-06457 (App. Bd., May 16, 2011).

⁹*Id.*

I considered that Afghanistan and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the Afghan Government targets U.S. citizens for protected information. The human rights issues in Afghanistan continues to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family members in Afghanistan. Based on all these factors, Applicant's contacts raise a heightened risk under AG ¶¶ 7(a) and (b).

The foreign influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and the following are potentially applicable:

(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.;

(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; 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 monthly or less frequent telephone contacts with his family members in Afghanistan is sufficient to establish casual contacts. His sisters, mother, and mother-in-law are housewives in rural areas or villages with no connections to the Afghan government or terrorist organizations. Two brothers are farmers; one brother is a grocer; and one brother is a medical doctor, working in an American clinic. They are working to support themselves and to improve life in Afghanistan, not to undermine the United States. These siblings are not likely to place Applicant in a position of having to chose between the interests of the United States and of Afghanistan. The work of his brothers is not high profile, making them less likely to be a target of terrorists.

Applicant defected to the United States 26 years ago and was granted asylum by the United States government. He became a United States citizen 15 years ago and four of his children are U.S. citizens by birth. He has lived in the United States for many years. He chose to relinquish his Afghan citizenship and become a United States citizen, the country which granted him asylum after he fled the communist controlled Afghan government. His family members are not likely to place Applicant in a position of having to chose between the interests of the United States and of Afghanistan because

the United States is now his country. Applicant does not talk with his Afghan family members about his current work. He limits his contacts to telephone calls. A review of the evidence reflects that his foreign family contacts are not likely to create a risk of foreign influence or exploitation. There is no evidence that his family members are involved with the Government of Afghanistan or terrorist organizations. Rather, they live and work quietly. Applicant recognizes the obligations he has to the United States. In reviewing the record evidence, I find that Applicant can be expected to resolve any conflicts of interest in favor of the United States. He has mitigated the Guideline B security concerns under AG ¶¶ 8(a)-(b).

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant fled Afghanistan with a Russian helicopter in 1989 when the communists controlled the Afghan government. The United States granted him political asylum after his arrival in 1989. Applicant has since established a life for himself in the United States. His immediate family lives in the United States. Four of his five children are citizens by birth. Applicant and his wife chose to become U.S. citizens, making the United States his country of choice. For many years, Applicant worked as a truck driver. Since 2012, he

has worked as a linguist on behalf of the United States government in Afghanistan. As a linguist, he interprets not only the Afghan languages, he must also give context to the cultural nuances of the Afghan languages. Through his job, he supports the United States mission in Afghanistan. To do his job, he places himself in harms way because many dangers continue to exist in Afghanistan. His Afghan brothers and brothers-in-law work to provide shelter and food for their wives and children. His family members are working to improve life in Afghanistan, not against the United States. Applicant's priority is the United States, and his Afghan families' priority is to provide a safe and stable Afghanistan. Both military individuals, who have worked with him praise him, praise his contributions to the ongoing work of the coalition forces to help the Afghan government in its efforts to develop a democracy. In reviewing all the evidence, there is little likelihood that Applicant's family members can be used to coerce or pressure him into providing access to classified information.

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 security concerns arising from his family members in Afghanistan under Guideline F.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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 eligibility for a security clearance. Eligibility for a security clearance is granted.

MARY E. HENRY
Administrative Judge