



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



In the matter of:)	
)	
)	ISCR Case No. 12-09448
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On September 11, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C. This action was taken 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) implemented on September 1, 2006.

On September 24, 2012, Applicant answered the SOR and did not elect to have a hearing. Department Counsel received Applicant's case file on October 9, 2012; requested a hearing on October 24, 2012; and submitted a ready-to-proceed notification on November 29, 2012. The case was assigned to me on February 11, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 15, 2013. The hearing was held as scheduled on March 19, 2013. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3 Department Counsel's list of exhibits was marked as Hearing Exhibit (HE) 1. In HE 2, Department Counsel requested that I take administrative notice of facts concerning Afghanistan, which was granted without objection. Applicant testified and offered Applicant Exhibit (AE) A. He only had the original of AE A and wanted to submit a copy for the record. The record of the hearing was left open and Applicant timely submitted a copy of that document. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 26, 2013.

Findings of Fact

SOR and Applicant's Answer to the SOR

The SOR contained five Guideline B allegations. Those allegations asserted that Applicant's wife is a citizen of Afghanistan (SOR ¶1.a) and that his parents-in-law, brother-in-law, sister-in-law, and mother's cousin are citizens and residents of Afghanistan (SOR ¶¶ 1.b–1.e). Under Guideline C, the SOR asserted that Applicant applied for, and obtained, an Afghan passport after becoming a naturalized U.S. citizen (SOR ¶ 2.a) and that he used that Afghan passport to travel to Iran in May 2009 (SOR ¶ 2.b). In his Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 2.a, and 2.b. Some of his admissions contained explanatory comments. His admissions are incorporated as findings of fact.¹

Applicant's Background and Foreign Contacts

Applicant is a 26-year-old linguist employed by a defense contractor. He has worked for his current employer since February 2012. He was born in Afghanistan. He graduated from high school in the United States in June 2006 and attended college for about two years. He is married and has one child who is almost two years old. This is the first time that he is seeking to obtain a security clearance.²

Applicant's father was a shoemaker. In 1993, his father was killed in a rocket attack while he was standing near a vegetable cart at a bazaar in Kabul. Applicant believed the Taliban was responsible for that attack. In about 1991, his sister lost her hearing when a rocket exploded near their home. In about 1995, Applicant, his mother, and his sister fled to Pakistan to get away from the Taliban. In 2002, they were granted

¹ SOR and Applicant's Answer to the SOR.

² Tr. 6-7, 24, 37-38, 54; GE 1, 2, 3.

refugee status in the United States. They came to the United States without passports. He became a naturalized U.S. citizen in November 2008. His mother and sister are also citizens and residents of the United States. His mother has not remarried. His sister is his only sibling, and she is not married.³

Applicant's wife was born in Afghanistan. She is still a citizen of Afghanistan, but resides in the United States. From about 2004 to 2010, she lived with her parents as a refugee in Iran. Applicant had a courtship with his wife before they married, but their marriage was essentially arranged between his mother and her mother who were neighbors in Afghanistan.⁴

Before his marriage, Applicant traveled to Iran from May to August 2009 to meet his future wife. He obtained an Afghan passport for that travel. Prior to traveling, he was concerned about sending his U.S. passport to the Iranian Interest Section in Washington, DC, to obtain a visa. Specifically, he was concerned that his U.S. passport would be lost or that he would run into difficulties in Iran if he traveled on a U.S. passport. A U.S. Government employee, who administered naturalization tests, suggested that it might be better for Applicant to obtain an Afghan passport for use in traveling to Iran. After doing some research on the internet, Applicant contacted an Afghan consulate and obtained an Afghan passport. When he returned from his trip to Iran, he gave his Afghan passport to his mother and told her to destroy it. He later checked with his mother and was informed that she destroyed it in 2009. In his Electronic Questionnaire for Investigations Processing (e-QIP) dated February 7, 2012, Applicant indicated that his Afghanistan passport was destroyed in August 2009. He has not obtained another Afghan passport since then and stated that he will not do so in the future. During an Office of Personnel Management interview, Applicant indicated that he is willing to renounce his Afghan citizenship.⁵

While in Iran, Applicant and his future wife had an engagement party. In 2009, Applicant's fiancée and her parents moved back to Afghanistan. In August 2010, she traveled to the United States on a fiancée visa. Applicant and his wife married the month she arrived in the United States. In October 2012, Applicant applied for his wife to obtain permanent resident alien status in the United States. The delay in filing for her "green card" occurred because he initially had no money to do so and then his wife became pregnant and she could not get vaccinated during her pregnancy. She has now obtained a work permit, but still is waiting to obtain her "green card." She plans to become a U.S. citizen. She has not left the United States since her arrival. At the time of the hearing, she was 23 years old. Their son was born in the United States.⁶

³ Tr. 24-29; GE 2, 3.

⁴ Tr. 30-31; GE 2, 3.

⁵ Tr. 31-34, 52-53, 64-68; GE 1, 2, 3.

⁶ Tr. 34-38, 44-45; GE 2, 3.

Applicant's mother- and father-in-law are citizens of Afghanistan and residents of Sweden. While living in Iran, his father-in-law sold meat grinders and had no connection with the Iranian Government. In about May of 2012, Applicant's parents-in-laws were granted asylum and moved to Sweden. He believes they may have Swedish "green cards." He indicated they are living there permanently. His father-in-law is elderly, has a heart condition, and no longer works. His mother-in-law does not work. They receive support from the Swedish Government. Applicant does not support them financially. His wife calls her parents about once or twice a month.⁷

Applicant's brother-in-law (wife's brother), his brother-in-law's wife, and their children are citizens and residents of the Netherlands. His brother-in-law is a tailor and has been living in the Netherlands for about ten years. Applicant's wife had contact with her brother about five times in the past year. Applicant's sister-in-law is a citizen of Afghanistan, but has been residing in Germany as a refugee since about May 2012. His sister-in-law is apparently separated from her Afghan husband, and resides with her two children. Applicant's wife has contact with her sister through Skype about two or three times a month.⁸

Applicant's cousin (mother's cousin) is a citizen and resident of Afghanistan. He is about 28 years old and has no affiliation with the Afghan government. He sells groceries in a bazaar. Applicant has never met his cousin in person. He has not had any contact with his cousin in the past year and did not know whether his cousin was married or had ever been arrested.⁹

Applicant has a female friend who is a citizen of Afghanistan. They met on Facebook while they were both students. They have never met in person. They had the same major in college and communicated about their studies. She was then studying at a university in Kyrgyzstan. His last conversation with her occurred in about February 2012. The last email he received from her indicated that she was going to Germany.¹⁰

Since becoming a U.S. citizen, Applicant has not voted in any Afghan elections, but has voted in U.S. elections. No evidence was presented that Applicant has any financial interests outside the United States. He has filed his U.S. income tax returns as required. He has been working as a translator in Afghanistan since about March 2012. He has been assigned to U.S. Army counterintelligence teams. In December 2012, he received a certificate of appreciation for his exemplary support to a counterintelligence team. At times, he is required to wear body armor and other military gear. The military installation that he has been assigned to has been subjected to mortar or rocket attacks

⁷ Tr. 38-41, 60, 60-63; GE 2, 3.

⁸ Tr. 41-45, 63-64; GE 2, 3.

⁹ Tr. 45-48; GE 2, 3.

¹⁰ Tr. 48-50; GE 2, 3.

while he has been there. He returns to the United States periodically to visit his family. His goal is to buy a home in the United States.¹¹

Afghanistan¹²

Afghanistan became an independent nation in 1919. A monarchy ruled until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as Mujahideen, opposed the communist regime. The resistance movement eventually led to an agreement known as the Geneva Accords, signed by Afghanistan, Pakistan, the United States, and the Soviet Union, that ensured Soviet forces withdrew by February 1989.

The Mujahideen were not a party to the negotiations for the Accords and refused to accept them. As a result, a civil war continued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to anarchy and the division of the country among warlords that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin-Laden, to Al Qaida generally, and to other terrorist organizations.

After the September 11, 2001, terrorist attacks in the United States, the Taliban rejected U.S. demands to expel Bin-Laden and his followers from Afghanistan. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power in November 2001. After a few years of control by an interim government, the first democratic election took place in 2004, and a second round took place in 2009. Despite progress made since the Taliban was disposed, Afghanistan still faces many daunting challenges. Among these challenges are: defeating terrorists and insurgents; recovering from over three decades of civil strife; and rebuilding a shattered physical, economic, and political infrastructure.

Afghanistan's human rights record remains poor. Human rights problems included extrajudicial killings; torture and other abuse; poor prison conditions; widespread official impunity; ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; prolonged pretrial detention; judicial corruption; violations of privacy rights; restrictions on freedom of the press; limits on freedom of assembly; restrictions on freedom of religion, including on religious conversions; limits on freedom of movement; official corruption; violence and societal discrimination against women; sexual abuse of children; abuses against minorities; trafficking in persons; abuse of worker rights and child labor. There were numerous reports of the government – or its agents – committing arbitrary or unlawful killings.

¹¹ Tr. 50-60, 68-70; GE 1; AE A.

¹² HE 2.

Despite some tactical defeats and operational setbacks, the Taliban-led insurgency continues to threaten U.S. and international goals in Afghanistan. The insurgents retain the capability and intent to conduct high-profile attacks that have had a disproportionate effect on local and international perceptions of security. Although there have been some improvements in the Afghan military and police forces, progress is slow and uneven. Predatory corruption – extortion, land seizures, illegal checkpoints, kidnapping, and drug trafficking that threaten local communities and authority structures – has fueled the insurgency and is detrimental to the Afghan people’s perception of their government and to the international community’s objectives.

Criminal networks and narcotics cultivation constitute a source of funding for the insurgency in Afghanistan. Streams of Taliban financing from across the border in Pakistan, along with funds gained from narcotics trafficking and kidnapping, have allowed the insurgency to strengthen its military and technical capabilities. Instability along the Pakistan-Afghan frontier also continued to provide Al-Qaida with the opportunity to conduct training, planning, and targeting of Western European and U.S. interests.

The U.S. Department of State warns that the security threat to U.S. citizens in Afghanistan remains critical. Travel in all areas of Afghanistan is unsafe due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of terrorist attacks. Numerous high-profile Afghan government officials were assassinated in 2011. No part of Afghanistan is immune from violence. Even the Afghan capital, Kabul, is considered at high risk for militant attacks, including rocket attacks, vehicle-borne IEDs, and suicide bombings.

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 AG list potentially disqualifying conditions and mitigating conditions, which are useful 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 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. 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. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 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 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. I have considered all of them, and the following disqualifying conditions potentially apply:

(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;

(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;

(c) sharing 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone could be sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. In this case, Applicant's cousin is a citizen and resident of Afghanistan. His wife, parents-in-law, sister-in-law, and a friend are citizens of Afghanistan, but reside in other countries. Those continuing, close contacts are sufficient to raise Guideline B security concerns.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an unstable government or subject to terrorist activity. Insurgency operations are being conducted in Afghanistan against Afghan and U.S. forces. There is also evidence that Afghanistan has a poor human rights record and has active terrorist groups operating within its borders. This places the burden of persuasion on Applicant to demonstrate that his contacts in Afghanistan do not pose a security risk and that he will not be placed in a position of having to choose between his loyalty to the U.S. and his family members. With Afghanistan's negative human rights record, its unstable government, and the violent insurgency being conducted within its borders, it is conceivable that Applicant's family members could be vulnerable to coercion. The dangerous circumstances that exist in Afghanistan create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. I find that AG ¶¶ 7(a) and 7(b) apply in this case. AG ¶ 7(c) does not apply.

I have also analyzed all of the facts and considered all of the mitigating conditions under AG ¶ 8. The following mitigating conditions potentially apply:

(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.

Of Applicant's foreign contacts listed in the SOR, only his cousin continues to reside in Afghanistan. Applicant is not close to his cousin. He has never met his cousin in person. He has not had any contact with his cousin in the past year. He only had contact with his cousin when he was living with his mother and his mother and cousin would communicate with each other. Applicant's contact with his cousin is so casual and infrequent that there is little likelihood that it would create a risk of foreign influence or exploitation. AG ¶ 8(c) applies to SOR ¶ 1.d.

Since the SOR was issued, the residences of most of Applicant's foreign contacts have changed, thereby reducing significantly the likelihood of any foreign influence and exploitation in this case. Applicant's parents-in-law now live in Sweden. His brother-in-law is a citizen and resident of the Netherlands. His sister-in-law is a resident of Germany. His friend listed in the SOR is also in Germany. Given these changes, it is unlikely that Applicant will be placed in a position of having to choose between the interests of a foreign individual or group and the interests of the United States. Applicant is a loyal U.S. citizen who has worked overseas in dangerous conditions in support of U.S. forces. The Appeal Board has held that an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case.¹³ Applicant has met his burden of mitigating the security concern under Guideline B. AG ¶¶ 8(a) and 8(b) apply to all of the Guideline B allegations.

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference is as follows:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to

¹³ ISCR Cases No. 06-25928 at 4 (App. Bd. Apr. 9, 2008) (internal citations omitted). See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) citing ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May, 30, 2006); and ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006).

provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. Two are potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport; and

(b) action to acquire or obtain recognition of foreign citizenship by an American citizen.

After becoming a U.S. citizen, Applicant obtained an Afghan passport in 2009. He used his Afghan passport to travel to Iran in 2009. AG ¶¶ 10(a) and 10(b) apply.

AG ¶ 11 sets forth conditions that could mitigate foreign preference security concerns. Three are potentially applicable here:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willing to renounce dual citizenship; and

(d) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

In 2009, Applicant actively exercised his foreign citizenship by obtaining an Afghan passport while he was a U.S. citizen. AG ¶ 11(a) does not apply. He was about 22 years old when he obtained that foreign passport. His decision to obtain that passport was based in part on advice obtained from a U.S. Government employee, but he was also concerned about losing his U.S. passport by sending it to the Iranian Interest Section to obtain a visa and about being hassled while traveling on a U.S. passport in Iran. He no longer has a need to travel to Iran or to obtain a foreign passport. He has expressed a willingness to renounce his Afghan citizenship. He indicated that his mother destroyed his Afghan passport and that he has no intention of obtaining another Afghan passport. AG ¶¶ 11(b) and 11(d) 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(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.

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 Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is a loyal U.S. citizen that has worked overseas under dangerous conditions in support of U.S. forces. Nevertheless, the complicated state of affairs in Afghanistan places a significant burden of persuasion on Applicant to demonstrate that his foreign family members in that country do not pose an unacceptable security risk. He has met that burden. He only has one family member who remains in Afghanistan and he has only casual and infrequent contact with that family member.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under the foreign influence and foreign preference guidelines.

Formal Findings

Formal findings 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
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 1.a-1.b:	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 access to classified information is granted.

James F. Duffy
Administrative Judge