



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



In the matter of:)
)
) ISCR Case No. 14-03619
)
Applicant for Security Clearance)

Appearances

For Government: Davis F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

06/19/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant was born in Afghanistan. He immigrated to the United States in 2008, and became a naturalized U.S. citizen in 2013. His ex-wife is a naturalized U.S. citizen and they have a U.S.-born son. He was deployed and risked his life in support of U.S. interests in Afghanistan. His mother and fiancée live in Afghanistan. He failed to demonstrate that his contacts in Afghanistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States and his connections to family members. He failed to mitigate the foreign influence security concerns raised. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 22, 2014. On November 17, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence).¹ Applicant answered the SOR on January 8, 2015 (via email), and requested

¹ DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

a hearing before an administrative judge. The case was assigned to me on February 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 23, 2015, scheduling a hearing for March 13, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on March 23, 2015.

Procedural and Evidentiary Rulings

Applicant testified at the hearing and offered exhibit (AE) 1, post-hearing. The Government offered exhibits (GE) 1 and 2. GE 1 and AE 1 were admitted without objections. GE 2 is a request for me to take administrative notice of facts concerning the government of Afghanistan. GE 2 was marked and attached to the record, but not admitted into evidence. Applicant raised no objections, and I took administrative notice of facts concerning the government of Afghanistan as outlined in the request.

Findings of Fact

Applicant admitted the two SOR factual allegations. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his SCA, his answer to the SOR, and his testimony, I make the following findings of fact.

Applicant is a 38-year-old linguist seeking a position with a federal contractor supporting U.S. interests abroad. His job is conditioned on eligibility for a clearance. Applicant was born in Afghanistan. His mother, his fiancée and their immediate and extended family members are citizens and resident of Afghanistan.

Applicant testified that his parents were farmers and they subsisted by working a family-owned parcel of land that his father inherited. His father passed away from a heart attack when Applicant was 13 years old. He and his mother continued to work the land until he was about 20 years old when they immigrated to Pakistan seeking refuge from the war. He attended high school in Pakistan (from 1995 to 1998), and they lived in that country until Applicant was 31 years old. He acquired three friends when he was in Pakistan, with whom he remains in contact. Applicant claimed that two of his friends are now U.S. citizens and residents, and one is a Canadian citizen. He denied having any additional friends or family members in Pakistan.

In 2005, Applicant married an Afghan woman related to his mother's family. Applicant immigrated to the United States to be with his wife in 2008, at age 31. They have an eight-year-old son, born in the United States in 2006. He divorced in 2012. Applicant became a naturalized U.S. citizen and received a U.S. passport in 2013. Applicant possesses an expired Afghan passport that he does not intend to renew. Applicant is currently engaged to an Afghan woman that he met through his mother. He anticipates getting married in April – May 2015. He retained an attorney to help him

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

obtain a U.S. visa for his fiancée. He testified that the visa was approved and they are waiting for it to be issued.

Applicant's mother is 70 years old, and she is a citizen and resident of Afghanistan. He supports his mother with \$300 a month. He has contact with his mother weekly, but would like to have more frequent contact with her because of her age. Applicant testified that his mother wants to be a U.S. citizen. He intends to retain an attorney in the near future to assist him with the process of obtaining a visa for his mother. Applicant claimed he had no other relatives in Afghanistan. However, he later stated that he may have some extended family members with whom he claimed he has no contacts.

Applicant started working as a linguist for a federal contractor, and submitted his first SCA in 2011. He was deployed to Afghanistan in support of U.S. Army units for approximately 18 months. During that period, he participated in field missions and was under enemy fire on several occasions. According to one of his references, Applicant would have been tortured and killed if he was captured. He was considered to be a great asset for the units he worked with, and was lauded for his professionalism and enthusiasm in the performance of his duties.

Applicant disclosed in his 2011 SCA that he inherited from his father the family farm. He claimed that the farm was abandoned when he and his mother immigrated to Pakistan, and that the land currently has little or no value. He estimated the size of the parcel of land to be about the size of two football fields.

Applicant testified that he is now a proud U.S. citizen and he intends to live and retire in the United States. He does not intend to return to live in Afghanistan. He likes the opportunities and freedom that he enjoys in the United States. Applicant has no property or financial interests in the United States, except for his job. He claimed that he owns no property or financial interests in any other country, except for the farm land he owns in Afghanistan. He plans to purchase a home after he gets married.

Applicant did not travel to Afghanistan (for personal reasons) from 2008 (when he entered the United States) until March 2014. His last visit to Afghanistan for personal reasons was in 2014, when he went to meet his fiancée.

I take administrative notice of the following facts. Afghanistan is located in Southwestern Asia and borders Pakistan, Iran, and Russia. It has been an independent nation since 1919, after the British relinquished control. A monarchy ruled from 1919 until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. In 1979, Soviet forces invaded and occupied Afghanistan. A resistance movement eventually led to an agreement known as the Geneva Accords, signed by Afghanistan, Pakistan, the United States, and the Soviet Union, which ensured Soviet forces withdrew by February 1989. The resistance party was not part of the Accords and refused to accept it. A civil war ensued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to anarchy and the existence of

warlords. The Taliban sought to impose an extreme interpretation of Islam and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin Laden, al Qaida, and other terrorist organizations.

After the September 11, 2001 terrorist attacks, demands to expel Bin Laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power in November 2001. The new democratic government took power in 2004, after a popular election. Despite that election, terrorists, including al Qaida and the Taliban, continue to assert power and intimidation within the country. Safety and security are key issues, because these terrorists target United States and Afghan interests by suicide operations, bombings, assassinations, carjacking, assaults, and hostage taking. At this time, the risk of terrorist activity remains extremely high.

Afghanistan has significant human-rights problems. Civilians continue to bear the brunt of the violence and increased attacks from terrorist organizations. The most significant human-rights problems included credible reports of torture and abuse of detainees by Afghan security forces; widespread violence, including armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; pervasive official corruption; and endemic violence and societal discrimination against women. Corruption is endemic throughout society, and flows of money from the military, international donors, and the drug trade continue to exacerbate the problem.

Afghan leaders continue to face the eroding effect of official corruption and drug trade. Criminal networks and narcotics constitute a source of funding for the insurgency in Afghanistan. Other insurgent groups and anti-coalition organizations also operate in Afghanistan. Insurgents have targeted non-government organizations, journalists, government workers, and United Nation workers. Instability along the Pakistan-Afghan frontier continued to provide al Qaida with leadership mobility and the ability to conduct training and operational planning, targeting Western European and U.S. interests.

The U.S. Department of State has declared that the security threat to all American citizens in Afghanistan remains critical as no part of the country is immune to violence. Numerous terrorist organizations, including the Haqqani Network, the Afghan and Pakistani Taliban, al Qaida, and Lakshar-e-Tayyiba (LET) continue to operate within Afghanistan orchestrating organized attacks against U.S. personnel and assets within the country.

In 2012, the United States and Afghanistan signed a 10-year strategic partnership agreement that demonstrates the United States commitment to strengthening Afghanistan's sovereignty and stability. The Afghan central governmental capacity and effectiveness has increased, but local governance remains weak and all levels of government are plagued by governmental corruption. The convergence of insurgent, terrorist, and criminal networks is pervasive and constitutes a threat to Afghanistan's stability. Criminal networks, insurgent groups, and corrupt government officials are often interlinked via multi-layered connections, making ties between the

officials and criminal activity difficult to prove and prosecute. These factors all contribute to popular disaffection with the government.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

- (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.

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 is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.² Applicant has contacts and a close relationship of affection and obligation with his mother and she is a citizen and resident of Afghanistan.

This contact creates a risk of foreign pressure or attempted exploitation because there is always the possibility that Afghan agents, criminals, or terrorists operating in Afghanistan may exploit the opportunity to obtain information about the United States. With its negative human-rights record, its government, and the violent insurgency that

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

operates within the Afghan borders, it is conceivable that Applicant's mother could be vulnerable to coercion.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three foreign influence mitigating conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that the above mitigating conditions do not fully apply and do not mitigate the security concerns. Applicant's evidence is insufficient to establish that it is unlikely he will be placed in a position of having to choose between the interests of a foreign individual and the interests of the United States. Applicant's mother and fiancée both are residents and citizens of Afghanistan. Applicant has frequent contact with his mother and fiancée. If members of the community, terrorists, criminals, or corrupt government officials became aware of his work for U.S. interests, his mother, fiancé, and extended relatives could be in danger or placed at unnecessary risk.

In deciding whether Applicant's family members are in a position to be exploited, I considered Afghanistan's form of government. 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 or the country is known to conduct intelligence collection operations against the United States. The relationship

of Afghanistan with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Afghanistan do not pose a security risk.

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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives, terrorists, or criminals from Afghanistan seek or have sought classified or economic information from or through Applicant, his mother, fiancé, or other relatives living in Afghanistan. However, we cannot rule out such a possibility in the future. There is evidence of insurgency operations being conducted in Afghanistan against U.S. forces. There is also evidence that Afghanistan has active terrorist groups operating within its borders. It is possible that terrorists would attempt to coerce Applicant through his relatives living in Afghanistan, if they determined it was advantageous to do so. This places the burden of persuasion on Applicant to demonstrate that his contacts in Afghanistan do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his connections to family members.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family members living in Afghanistan. Applicant left Afghanistan in 2008, at age 27, after living for an extended period in Pakistan. He immigrated to the United States in 2008, and became a naturalized U.S. citizen in 2013.

Applicant married his Afghan-born ex-wife (apparently a naturalized U.S. citizen) in 2005. He has one son born in the United States in 2006. He has made the United States his home since 2008, and has been a productive U.S. citizen. Applicant has established strong connections to the United States. This is demonstrated by his service as a linguist supporting U.S. servicemembers in Afghanistan. During his service, he risked his life several times in combat while working in support of U.S. personnel. Applicant inherited a parcel of land in Afghanistan. He claimed he has no other financial or property interests in any foreign country.

Notwithstanding, the record evidence fails to support a determination that Applicant’s ties and sense of obligation to the United State are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even

under circumstances detrimental to his mother, fiancée, and extended family members and friends in Afghanistan.

Applicant's contact with his mother and fiancée in Afghanistan create a heightened risk of foreign influence and exploitation. 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, criminals, or governmental entities in that country.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline B in my whole-person analysis. Considering the evidence as a whole, Applicant's favorable evidence is insufficient to demonstrate that his contacts in Afghanistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States and his connections to family members and his fiancée. I specifically considered Applicant's service to U.S. interests in Afghanistan under dangerous circumstances. On balance, and considering the evidence as a whole, Applicant failed to mitigate the Guideline B 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 B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge