



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02309

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: *Pro se*

04/16/2019

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated foreign influence and personal conduct concerns, but did not mitigate financial considerations concerns. Eligibility for access to classified information is denied.

History of Case

On March 2, 2018, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 Security Executive Agent, Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, effective June 8, 2017.

Applicant responded to the SOR on May 14, 2018, and requested a hearing. The case was assigned to me on February 19, 2019, and was scheduled for hearing on April February 14, 2019. At the scheduled hearing, the Government's case consisted of six exhibits (GEs 1-6) that were admitted without objection; Applicant relied on one witness (himself) and six exhibit (AEs A-F) that were admitted without objection. The transcript (Tr.) was received on February 26, 2018.

Besides its six exhibits, the Government requested administrative notice of certain facts pertaining to Afghanistan. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006).

There being no objection, and for good cause shown, administrative notice was granted with respect to the requested facts and incorporated source documents addressing the geopolitical situation in Afghanistan. The Government's administrative notice and incorporated source documents were received as HE 1. Administrative notice was extended to the requested facts and incorporated source documents consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing the current status of Afghanistan.

In addition to taking official notice of the facts and source documents covered by the Administrative Notice Request, I took official notice, *sua sponte*, of *Background Note: Afghanistan*, U.S. Department of State (November 2011) This document contains pertinent background information covering Afghanistan. This document was received as HE 2.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with endorsements and payment documentation of several of his SOR-listed delinquent debts. For good cause shown, Applicant was granted 30 days to supplement the record, and the Government was afforded three days to respond. Within the time permitted, Applicant provided emailed endorsements, payment documentation, and updates of his creditor contacts. Applicant's submissions were admitted without objection as AEs G-M.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 13 delinquent debts exceeding \$11,500. Allegedly, these debts remain outstanding and unresolved.

Under Guideline E, Applicant allegedly was terminated from two prior places of employment as the result of claimed violations of (a) company policies covering complaints of unwanted sexual advances and (b) of company policies related to socializing with a visitor.

Under Guideline B, Applicant allegedly has family members (parents, brothers, and a mother-in-law) who are citizens and residents of Afghanistan.

In his response to the SOR, Applicant admitted most of the allegations with explanations. He denied being terminated from prior employment positions. He claimed he was set up in connection with his alleged termination from Company A, and he denied ever socializing with a visitor in connection with his alleged termination from Company B.

Findings of Fact

Applicant is a 38-year old administrative assistant for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born and raised in Afghanistan to parents of Afghan descent. (GEs 1-3; Tr. 43) He immigrated to the United States in February 2008 with his wife and two children looking for a better life. (GE 1-3) He received a green card in 2008 and was naturalized as a U.S. citizen in September 2016. (GEs 1-3)

Prior to becoming a naturalized U.S. citizen, Applicant renounced his Afghan citizenship. (GE 2) He owns no property in Afghanistan and has no financial interests or military obligations in his native country. He assured that he has no affiliations or associations with the Afghan government. (GEs 2-3) His assurances are credible and are accepted.

Applicant married in October 1987 and has four children (ages 3 to 15) from this marriage. (GEs 2-3 and Appellant's response; Tr. 45) Two of his children were born in Afghanistan, and all of them attend U.S. schools. (GEs 1-3; Tr. 45) Applicant's wife became a naturalized U.S. citizen in December 2003. (GE 1)

Applicant reported no advanced educational credits in the United States or military service. (GEs 1-6) He has never held a U.S. security clearance. (GEs 1-3)

Since December 2016, A (GEs 1-2) Applicant has worked as an administrative assistant for a defense contractor. He reported brief periods of unemployment in 2016 following his terminations by Company A in July 2015 and more recently by Company B in March 2016. (GEs 1-2) Between 2008 and July 2015, he worked for different non-defense employers in various jobs (some full-time and some part-time) and reported interspersed periods of unemployment. (GEs 1-2)

Between 2002 and 2008, Applicant worked as a linguist for the U.S. Army and diplomatic services in Afghanistan. (GEs 1-3 and AEs E and K; Tr. 38-39, 46-47) He is fluent in both Hindi and Urdu and is interested in pursuing translation opportunities with the U.S. Army in the future. (Tr. 39, 42-45) Since immigrating to the United States, Applicant has never returned to Afghanistan and has never been visited by any of his family members residing in Afghanistan. (GEs 1-3; Tr. 53)

Applicant's family members

Applicant has numerous family members who are citizens and residents of Afghanistan. His parents, three elder brothers and his mother-in-law all are citizens and residents of Afghanistan. (GEs 1-2; Tr. 46) His mother is an educated kindergarten teacher for a public school and is compensated by the Afghan government for her services. (Tr. 48-49) His father is a retired military officer who served two years of active duty (1979-1981) in the Afghan military forces before being separated in 1981 for medical reasons with the rank of colonel. (GE 2; Tr. 37-38, 41-43, 48-50) Since his medical separation, Applicant's father has been unemployed and has no affiliation with the Afghan government or any foreign government. (GE 2) None of Applicant's family members (inclusive of his parents, brothers, and mother-in-law) residing in Afghanistan have any known affiliations with the Afghan government or military. (GE 2; Tr. 40)

Applicant maintains monthly telephone contact with his parents and in the past has sent money to them on numerous occasions between May 2008 and June 2011. (GE 2) He maintains less frequent contact with his brothers and mother-in-law in Afghanistan. He also maintains infrequent contact with uncles, cousins, and other extended family members who reside in Afghanistan. (GE 2)

Applicant continues to provide financial support to his parents and sends them money every three months. (Tr. 51) Within the past year, he estimated to have sent his parents between \$7,000 and \$8,000 to help them with their bills. (Tr. 51-53) Between 2008 and 2011, he estimated to have remitted to his parents sums ranging between \$150 and \$2,000, and exceeding \$8,000 in the aggregate. (GE 3)

Country information on Afghanistan

Afghanistan is a country in Southwestern Asia. It is sometimes referred to as the crossroads of Central Asia. See *Background Note: Afghanistan, supra*, at 2. It has had a turbulent history.

Following invasions by Alexander, the Scythians, the White Huns, and the Turks, the Arabs invaded Afghanistan in 642 AD and introduced Islam. See *Background Note: Afghanistan, supra*, at 3. Arab rule held for several hundred years before giving way to the Persians who controlled the region until 998 before succumbing to the Turkic Ghasnavids. (*Id.*) Turkish rule under Mahmud was short-lived and was followed by attempts by various princes to rule sections of the country before the Mongol invasion of 1219 under Genghis Khan. (*Id.*)

For many centuries following Khan's death in 1227, the country was contested by a succession of chiefs and princes. By the late 14th century, Tamerlane (a Khan descendent) incorporated Afghanistan into a vast Asian empire. (*Id.*)

In 1747, Ahmad Shah Durrani (the founder of what is known today as Afghanistan) established his control over most of Afghanistan. British expansion in the 19th century was countered by Russian advances and precipitated Anglo-Afghan wars

and later led to a boundary accord that created what would become modern Afghanistan. See *Background Note: Afghanistan, supra*, at 3.

Since the British relinquished control in August 1919, Afghanistan has been an independent state. *Background Note: Afghanistan, supra*, at 3-4. Between 1919 and 1973, Afghanistan moved away from its longstanding isolation under a succession of Muslim rulers: King Amanullah (1919-1929), Nadir Khan (1929-1933), and Mohammad Zahir Shah (Nadir Khan's 19-year-old son), who ruled Afghanistan for over 40 years (1933-1973). See *Background Note: Afghanistan, supra*.

Prime minister between 1953 and 1963, Sardar Mohammad Daoud mounted a military coup in 1973 and seized power amid charges of corruption and malfeasance against Zahir Shah and his royal family. Daoud proceeded to abolish the monarchy, abrogate the constitution, and declare Afghanistan a republic. See *Background Note: Afghanistan, supra*, at 4-5. His economic and social reforms contributed little, however, to stabilizing political conditions in the country. Following a Soviet-supported overthrow and assassination of Daoud in April 1978, a Marxist government was formed with the backing of the Soviets. See *Background Note: Afghanistan, supra*, at 5. Sur Muhammad Taraki was installed as the country's president of the revolutionary council.

Opposition to the Taraki government increased as many of members of Afghan elites, religious establishments, and intelligentsia were imprisoned, tortured, or murdered. A revolt against the Marxist government occurred in the summer of 1978 and quickly spread into a countrywide insurgency. (*Id.*)

Soviet invasion

Seeking to take advantage of the unrest following the April 1978 coup, the Soviet Union quickly signed a bilateral treaty of friendship and cooperation with the new Afghan regime and increased its military assistance to the regime. See *Background Note: Afghanistan, supra*, at 5-6. Faced with a deteriorating security situation, the Soviets invaded Afghanistan in December 1979, killed the Afghan ruler, and installed Babrak Karmal (an exiled leader of the Parcham faction) as the country's prime minister. (*Id.*)

Afghan freedom fighters (*mujahideen*) who opposed the Karmal communist regime, armed with weapons and training assistance from the U.S. and its allies, collaborated with other Peshawar-based guerilla groups in the 1980s to destabilize the Karmal regime. See *Background Note: Afghanistan, supra*, at 6-7. The resistance movement eventually led to an agreement known as the Geneva Accords (signed by the front-line states of Pakistan and Afghanistan, the United States, and the Soviet Union). The agreement served to ensure that Soviet forces withdrew from the country in accordance with their expressed commitments in February 1989. (*Id.*)

Ascendency of the Taliban

By the mid-1990s, the Taliban had risen to power in reaction to the anarchy and increase of warlords in the aftermath of the withdrawal of Soviet forces. Many of the Taliban had been educated in *madrassas* in Pakistan with roots in rural Pashtun areas of

the country. See *Background Note: Afghanistan, supra*, at 7. Beginning with its capture of Kandahar in 1994, the Taliban mounted an aggressive expansion of its control throughout Afghanistan. By the end of 1998, its forces occupied almost 90 percent of the country, and reduced its opposition largely to a small sections of the northeast and the Panjshir valley. (*Id.*)

Bolstered by its imposition of an extreme interpretation of Islam on the entire country, the Taliban committed massive human rights violations (particularly directed at women and children), and committed serious atrocities against minority populations. From the mid-1990s, the Taliban provided sanctuary to Osama bin Laden, and provided a base of operations for his and other terrorist organizations. (*Background Note: Afghanistan, supra*, at 7-8). Bin Laden and his Al-Qaida group are known to have provided financial and political support to the Taliban, and Al-Qaida acknowledged their responsibility for the September 11, 2001 terrorist attacks against the United States.

Beginning in October 2001 (following the Taliban's refusal to expel bin Laden), the United States and its coalition partners initiated a military campaign, targeting terrorist facilities and Taliban military and political assets within Afghanistan. U.S. military and anti-Taliban forces routed the Taliban and caused their rapid disintegration. After the fall of Kabul in November 2001, a UN-sponsored conference was created to restore stability and governance in Afghanistan. See *Background Note: Afghanistan, supra*, at 7-8. From this conference emerged a Transitional Authority headed by President Hamid Karzai. This authority (renamed the Transitional Islamic State of Afghanistan) was charged with the responsibility of drafting a constitution. (*Id.*, at 8)

A new constitution was drafted and ratified by a constitutional loyal *jirga* on January 4, 2004. See *Background Note: Afghanistan, supra*, at 8. The Afghan constitution provides for indirect election of the National Assembly's upper house by the provincial councils and by reserved presidential appointments. On December 4, 2004, the country was renamed the Islamic Republic of Afghanistan. (*Id.*; *Country Specific Information: Afghanistan, supra*, at 1). Hamid Karzai was sworn in as Afghanistan's President on December 7, 2004. He presided over the new government's first convened parliament in late 2005. See *Background Note: Afghanistan, supra*.

Presidential and provincial elections in Afghanistan for 2010 were coordinated by the Afghanistan Independent Election Commission (IEC), with assistance from the UN. *Id.* Challenged presidential election results in 2010 have not been widely disseminated. See *Background Note: Afghanistan, supra*, at 8-9.

Political conditions in Afghanistan

A new democratic government assumed control of Afghanistan in 2004 following a popular election. While the national government has continued to expand its authority, it has been hampered in its ability to deliver necessary social services and remains dependent on U.S.-led assistance. See *Background Note: Afghanistan, supra*. With its international community support at work, its ability to secure its borders and maintain internal order is increasing.

Although the Taliban-led insurgency in Afghanistan has lost ground in some areas, it remains resilient and capable of challenging U.S. and NATO goals. Today, Afghanistan's local government lags, and corruption remains widespread. See Administrative Notice, *supra*, at 3; *Country Reports on Terrorism 2016*, Ch. 5, Terrorist Safe Havens at 5, U.S. Department of State (July 2017)

Afghan insurgency and extremist networks, fueled by Taliban, Al Qaida, and Haqqani Network support, continue to assert power and intimidation within the country. See Administrative Notice, *supra* at 4; *Country Reports on Terrorism 2016*, Chapter 2 at 1 U.S. Department of State (July 2017) Safety and security remain key concerns because these terrorist organizations continue to target U.S. and Afghan interests by suicide operations, bombings, assassinations, car-jackings, assaults, and hostage-taking. See Administrative Notice, *supra*, at 5; *Report on Enhancing Security and Stability in Afghanistan* at 1, U.S. Department of Defense (June 2017). Risks of terrorist activity remain extremely high at the present time. See Administrative Notice, *supra*, at 3-4.

Human rights conditions in Afghanistan remain poor by all reported accounts. State Department Reports confirm active insurgent activity in Afghanistan. See *Country Reports on Human Rights Practices for 2016, Afghanistan*, U.S. Department of State (March 2017). The Department of State's 2016 Human Rights Report also noted widespread violence, predominantly indiscriminate attacks on civilians, armed insurgents groups' killing of persons affiliated with the Afghan government, and targeted violence against women and girls. See Administrative Notice Request, *supra*, at 5-6; *Country Reports on Human Rights Practices for 2016: Afghanistan*, *supra*.

No section of Afghanistan is safe or immune from risks of violence, kidnaping, hostage taking, military combat, operations, land-mines, banditry, armed rivalry between political and tribal groups, militant attacks, direct and indirect fire, suicide bombings, and insurgent attacks. See *Wave of Attacks Represent a Successful Urban Terrorism Campaign*, U.S. Department of State at 1-2 (February 2018). Kabul, in particular, has experienced increased militant attacks in recent years, including rocket attacks, vehicle-borne improvised explosive devices (IEDs), and suicide bombings. *Id.* Foreigners throughout the country continue to be targeted for violent attacks and kidnappings: some motivated by terrorism, and others by common criminal activity.

To date, Afghanistan has still encountered difficulties in building effective, honest, and loyal provincial and district institutions and lacks a coherent tribal engagement strategy for unifying the country. See Administrative Notice, *supra*, at 3-4; *Report on Enhancing Security and Stability in Afghanistan*, *supra*, at 1-2. Economic growth has been similarly slowed by a lack of investor confidence in the Afghan government and its prospects for the future.

U.S.-Afghanistan relations

Looking to the future, the United States recognizes the many challenges that the unity government of Afghanistan will continue to contend with as their leaders settle their own respective responsibilities. See *Report on Enhancing Security and Stability in*

Afghanistan, supra at 3. Despite these challenges, the fundamental partnership between the U.S.-led coalition and the Afghan government remains strong. (*Id.*) Afghanistan remains an important partner of the United States in its war against terrorism., and the United States continues to deploy resources to assist Afghanistan improve its security, governance, institutions, and economy. See Administrative Notice, *supra*, at 6.

Since the fall of the Taliban, the United States has supported the creation of a broad-based government in Afghanistan, and has made a long-term commitment to help Afghanistan reconstitute and rebuild following years of war and unstable governments. The United States and its coalition partners in the international community currently provide important humanitarian assistance, capacity-building, security protection, counter-narcotic programs, and infrastructure projects. The United States has also brought important political influence to bear on the establishment of durable democratic principles that recognize and incorporate democratic principles, promote the rule of law and encourage transparent and accountable forms of government. See *Report on Enhancing Security and Stability in Afghanistan, supra*.

In May 2012, the United States and Afghanistan signed the Enduring Strategic Partnership Agreement, demonstrated the United States' shared commitment to the combating of terrorism and the promoting of democratic values and economic opportunity in Afghanistan and the region. See *U.S. Relations with Afghanistan Fact Sheet* at 1-2, U.S. Department of State (January 2017). Through new initiatives forged between Afghanistan and the United States, beginning with the Silk Road Initiative completed in 2011, as a means of reconstructing infrastructure links in the region, both countries have helped to bolster peace and stability in the region by supporting a transition to trade and the opening of new markets in Central Asia and beyond. See *U.S. Relations with Afghanistan Fact Sheet* at 1-2.

What strategic options the United States ultimately adopts to enhance its working relations with Afghan's unity government in their joint efforts to limit the advances of an increasingly aggressive Taliban are uncertain at this time. Efforts between the two countries continue to be exerted to promote economic growth, bolster Afghanistan's business climate, improve the performance of the country's justice system, and help the Afghan government to maintain, and improve upon, the gains the country has made over the last decade in the areas of health, education, and women's rights. See *U.S. Relations with Afghanistan Fact Sheet, supra*, at 2.

Prior employer terminations

Between July 2015 and March 2016, Applicant was twice terminated by respective employers for violations of company policy. In July 2015, he was terminated by Company A due to cited policy violations relative to complaints of unwanted sexual advances. (GEs 2-3; Tr. 56-57) At the time of his termination from Company A, he was a full-time deputy jailer with a local detention center in his city of residence. Applicant expressed surprise at the time of his termination and insisted he had done nothing wrong to warrant the termination. (GE 2; Tr. 56)

In March 2016, Applicant was employed by another detention center and was terminated for cited reasons of violating company policy in socializing with a company visitor. (GEs 2-3) Applicant insisted he did nothing wrong to warrant his termination by this company. (GE 2; Tr. 57)

Asked about his terminations in his scheduled interview with an investigator from the Office of Personnel Management (OPM), Applicant acknowledged the terminations, while expressing surprise. (GE 2) His supervisor employed by the Company A detention center credited Applicant with honor, integrity, and superb job performance and attributed his termination to falling prey “to people in power that wanted him not to work there.” (AE G) The current elected jailer with the Company B detention center could not provide any further explanations of his termination. (AE G)

Based on the competing versions offered of the facts and circumstances surrounding Applicant’s termination from Company A, inferences are warranted that Applicant’s account provides the most detailed and convincing version. Allegations of poor judgment, unreliability, and untrustworthiness associated with Applicant’s 2015 termination are unsubstantiated.

Addressing his 2016 termination from Company B at the hearing, Applicant attributed his termination to disagreements with the cited deputy who was involved in a sexual encounter with a female employee. (Tr. 29-31) Applicant insisted that he had never made any sexual advances on the employee and was falsely accused of doing so to divert attention from the guilty deputy. Applicant’s accounts of this cited incident appear to be credible and are not controverted by any corroborating evidence to the contrary. Likewise, allegations of poor judgment, unreliability, and untrustworthiness associated with Applicant’s 2016 termination are unsubstantiated.

Applicant’s finances

Between 2013 and 2017, Applicant accumulated 13 delinquent debts exceeding \$11,500 according to his most recent credit reports. (GEs 4-6 and 7) Applicant attributed these debts to periods of unemployment and not paying enough attention to addressing his creditor obligations in a timely way. (GE 2; Tr. 50-53) With the responsibilities he has in caring for his wife and children as a sole provider, he has not been in a position to address his debts. His available income sources have been further attenuated by the monies he has committed to helping his parents in Afghanistan. (Tr. 50-53)

Since his hearing, Applicant has provided documentation of addressing several of his smaller debts. He provided proof of his unsuccessful contact effort to establish payment arrangement with SOR creditor 1.a (who holds a delinquent debt of \$3,235). (AE H) He provided documented proof, too, of resolving the following debts: SOR debts ¶¶ 1.c (with a \$130 payment in satisfaction of the reported \$1,040 debt); 1.e (with a \$100 payment in satisfaction of \$416 debt); 1.h (with a \$76 payment); and 1.k (a \$211 payment in satisfaction of \$681debt). (AEs H-K) Payment totals for these debts total \$517 on listed aggregate amounts of \$2,213. This still leaves unresolved debts exceeding \$9,700. Among his remaining debts are two judgments: one entered in June

2014 for \$2,009 (SOR debt ¶ 1.i) and another entered in April 2014 for \$1,331 (SOR debt ¶ 1.j). At this time, he could provide no firm plans for addressing his remaining debts with the income sources currently available to him. (Tr. 33)

Endorsements and Awards

Applicant is highly regarded by high-ranking U.S. officials and senior military commanders who worked closely with Applicant during Afghan military operations between 2002 and 2008. (AEs A and G) Senior U.S. officials credited Applicant with exceptional translation work while working in sensitive roles as an Embassy translator. (A-D) Senior military members credited Applicant with superb translation services in positions requiring high trust while embedded with military commands operating in Afghanistan. (AEs E and G) They expressed their appreciation for his extraordinary linguist support that consistently exceeded their expectations. (AEs E and G) Each of the Army commanders he worked closely with in combat missions characterized him as a linguist with strong character traits that served him well in the performance of his duties. (AEs E and G)

Former coworkers and family members who know Applicant attest to his strong work ethic and overall good character. (AE M) They credited him with traits of honesty and integrity.

Applicant earned numerous certificates of merit achievement and appreciation from the military commands he worked closely with while assigned to Afghanistan. (AE F) These awards express gratitude for Applicant's commitment and achievements to his military commands while working foreign translation assignments. (AE F)

Policies

The SEAD 4, App. A lists guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period

of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

The Concern: Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism. See AG ¶ 6.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . , AG ¶ 15.

Financial Considerations

The Concern: Failure to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse of dependence. An individual who is

financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the revised AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995) As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a highly regarded former linguist who currently works for a U.S.-based defense contractor in an administrative capacity. He is an Afghan citizen by birth and a naturalized U.S. citizen with permanent residency in the United States. Foreign influence concerns relate to Applicant's having immediate and extended family members who are citizens and residents of Afghanistan, a country with a somewhat checkered history of wars, political instability, and violence.

Additional security concerns are raised with respect to Applicant's previous terminations with company A and with Company B. Applicant's history of problems with managing his finances also raises security concerns.

Foreign influence concerns

Despite encouraging efforts in the development of strategic partnerships between Afghanistan and the United States in recent years, Afghanistan remains a war-torn country and one still in the process of establishing a stable democratic government that is able to build effective, honest, and loyal provincial and district institutions, provide effective protections for its constituent groups, and maintain cross-border security. The historically close relationship between Applicant and his immediate family members who reside in Afghanistan makes them potentially vulnerable to coercion and non-coercive measures.

Because Taliban, Al Qaida, and Haqqani Network insurgents operating in Afghanistan have a history of violating Afghan domestic laws and regulations, as well as international laws, they are more likely to use improper and illegal means, or one of the other, to obtain classified information in Applicant's possession or control through his family members still residing in Afghanistan. DC ¶ 7(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," applies.

To date, none of Applicant's parents, three brothers, and mother-in-law residing in Afghanistan have any history of being subjected to any coercion or influence. These historical antecedents do limit the severity of any potential conflict situation. However, the absence of any past coercive measures taken by Afghan authorities does not completely absolve Applicant from coercive risks in the future given Afghanistan's considerable history of wars, political instability, violence, hostage taking, and abusive measures taken against its own citizens. For these reasons, ¶ DC 7(b), "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology," has some application to Applicant and his family members residing in Afghanistan.

Still, none of Applicant's immediate family members have any known current affiliations or connections with the Afghan government or their military, or any other foreign government. Any potential conflict that might be associated with his sisters presents a low risk and not likely to pose any conflicts of interest for Applicant in the foreseeable future.

As a nation, Afghanistan continues to be a country with emerging strategic relationships with the United States and is a front-line partner in the war on terror. Because of the security dangers that still confront U.S. and Afghanistan forces operating in the region, Afghanistan remains a country that presents a heightened risk. Afghanistan is also a country that is benefitting from long-term U.S. commitments to help the Afghan government and its tribal regions reconstitute and rebuild their institutions and infrastructure in the aftermath of years of war, human rights abuses,

and political and economic mismanagement under Soviet-backed regimes and Taliban rule. Given the current geopolitical infrastructure that exists in Afghanistan, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant's can be characterized as somewhat reduced, commensurate with improved security and political conditions on the ground in the country.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Afghanistan. The AGs take into account the country's demonstrated relations with the United States as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk.

Applicant's situation is a special one for reasons that pertain wholly to his unique status and circumstances as a linguist working with diplomatic personnel and military commands operating in Afghanistan. Not only has he been careful to avoid any frequent contact with his sisters and in-laws in Afghanistan, but he has been scrupulous about making certain his family members are not aware of his linguist assignments and duties that cover Afghan culture and political conditions.

In special circumstances involving linguists who put themselves in harm's way by working in unstable countries where they have family members residing, the Appeal Board has been quick to note that such individuals are more likely to recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's strong connections to the United States and to his wife and children, his record of distinguished service as a linguist for high U.S. officials and military commands operating in Afghanistan make it highly unlikely he would ever resolve any potential conflict against his U.S. interests.

Based on his case-specific circumstances, MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 United States," is available to Applicant. Balancing security interests associated with Applicant's Afghanistan-based family members, conclusions warrant that neither Applicant nor his immediate or extended family members residing in Afghanistan pose any heightened security risks that could subject them to potential pressures and influence from Afghan government and military officials.

Of benefit to Applicant, too, is MC ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has

such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant’s demonstrated loyalty, patriotism, and professional commitments to the United States are well demonstrated and sufficient under these circumstances to neutralize all potential conflicts that are implicit in his relationships with his immediate and extended family residing in Afghanistan.

Two other mitigating conditions have application to Applicant’s situation. MC ¶¶ 8(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,” and 8(f), “the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.” are fully applicable. Applicant has no current property or other financial interests in Afghanistan, and there is an uncertain likelihood of his ever acquiring any inheritance rights in the country that could create any conflicts in the foreseeable future. What is known about his parents is that they have modest resources and receive some financial support from Applicant.

Personal conduct concerns

Based on the absence of any corroborating evidence to challenge Applicant’s accounts of the facts and circumstances surrounding his terminations from Companies A and B in 2015 and 2016, respectively, allegations of misconduct attributed to Applicant in both instances are neither corroborated nor substantiated. Applicant’s full accounts are accepted as the most credible versions of the events that transpired leading up to his terminations.

Financial concerns

Additional security concerns are raised over Applicant’s accumulation of delinquent debts between 2014 and 2016. Altogether, Applicant accumulated over \$12,000 in delinquent debts over a three-year period (2014-2016) that he has not sufficiently addressed to date to absolve himself of security concerns. Applicant’s debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligations.”

Applicant’s admitted delinquent debts negate the need for any independent proof. See Directive 5220.6 at E3.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant’s admitted debts are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to

coercion and influence, judgment and trust concerns are implicit in cases involving tax filing lapses and debt delinquencies.

Historically, the timing of addressing debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited extenuating circumstances (i.e., past unemployment and periodic remittances to his parents in Afghanistan) are extenuating and entitle Applicant to partial mitigation credit for his inability to address his debt delinquencies.

MC ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances," has partial application to Applicant's situation. His failure to more of his debt delinquencies after he returned to full time employment status in December 2016 precludes him, however, from taking more advantage of the "acted responsibly" prong of MC ¶ 20(b).

Satisfaction of Applicant's evidentiary burden of providing probative evidence of his addressing his debt delinquencies requires more documentation of his working payment efforts than he has provided in his submissions. While his extenuating circumstances are highly probative, they are not enough to mitigate his major financial delinquencies without more evidence of past and recent efforts to address more of his delinquent debts than he has been able to do with the income sources available to him with his full-time employment. While his post-hearing efforts of addressing several of his smaller creditors are encouraging, they still leave unresolved over 85% of his listed creditors without any documented concrete plans to resolve them.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts, and implicitly where applicable the timely resolution of federal and state tax debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, his failures or inability to establish documented payment initiatives with his listed SOR creditors, both before and after the initiation of the security clearance process, prelude favorable findings and conclusions with respect to raised security concerns over the state of his finances.

Whole-person assessment

To complete a whole-person assessment of Applicant's foreign influence and financial risks to ascertain whether they are fully compatible with minimum security clearance eligibility requirements, Applicant's substantial civilian contributions to U.S. security interests as an Afghan linguist between 2002 and 2008 require careful balancing with the raised security concerns. Applicant's endorsements and certificates of appreciation attest to his valuable contributions to U.S. military and diplomatic

services operating in Afghanistan. They are impressive and warrant considerable appreciation for his contributions to U.S. security interests.

Whole-person assessment is available also to minimize Applicant's exposure to conflicts of interests with his Afghan family members. So, in Applicant's case, the potential risk of coercion, pressure, or influence being brought to bear on him, or any of his respective family members residing in Afghanistan, is very low and mitigated. However, Applicant's past contributions to U.S. security interests (impressive as they are) are not enough at this time to mitigate security concerns over the state of his finances. Without more evidence of payment initiatives, it is still too soon to make safe predictions that Applicant can gain control of and consistently manage his financial affairs in a stable manner.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE F (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Subparagraphs 1.b-1.d, 1.f-1.g, 1.l -1.j, 1.l-1.m:	Against Applicant
Subparagraphs 1.a, 1.e, 1.h, and 1.k:	For Applicant
GUIDELINE E (PERSONAL CONDUCT):	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
GUIDELINE B (FOREIGN INFLUENCE):	FOR APPLICANT
Subparagraphs 3.a-3.d:	For Applicant

Conclusions

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

Roger C. Wesley
Administrative Judge

