



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



In the matter of:)
)
) ISCR Case No. 17-03727
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/21/2019

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guidelines B (foreign influence) and E (personal conduct). Applicant has contacts with family members, who are citizens and residents of Afghanistan, as well as with high-level government officials of that country. He also falsified his responses to two questions on his April 2016 security clearance application (SCA). Based upon all of the record evidence, Applicant failed to satisfy his burden of persuasion to mitigate the security concerns under Guideline B, and the Government’s evidence was sufficient to establish unmitigated security concerns under Guideline E that Applicant falsified his responses on his SCA. National security eligibility for access to classified information is denied.

Statement of the Case

On March 14, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines B and E. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative

guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR (SOR Response) on April 14, 2018. He requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). The case was originally assigned to another judge and then was reassigned to me on October 17, 2018. On the same day, DOHA issued a notice of hearing scheduling the hearing on November 14, 2018, via video teleconference. I convened the hearing as scheduled. It was determined at the outset that Applicant could not hear what was being said at the other end of the video teleconference. Applicant advised that he did not have his hearing aids with him. The Department Counsel moved for a continuance so that the proceeding could be conducted at a later date when Applicant was equipped with his hearing aids and could participate fully in the hearing. For good cause shown, I granted the continuance. It was noted that it would be desirable for the case to be presented in person to ensure that Applicant fully understood everything that was being said.

After the hearing was adjourned, Applicant stated that if it would expedite the scheduling of the hearing, he would be willing to travel a couple of hours to a location where DOHA routinely conducts in-person hearings. In due course, the case was again assigned to me, and DOHA sent Applicant a notice of hearing scheduling the case for March 12, 2019. I convened the hearing in person as scheduled. Applicant again came to the hearing without his hearing aids. We arranged his seating and Department Counsel's so as to make my comments and those of Department Counsel as clear and audible as possible for Applicant. He agreed with my instruction that he should interrupt the proceeding if he could not hear or understand what was being said. (Tr. 6-7.)

Department Counsel offered three documents into evidence, which were pre-marked as Government Exhibits (GE) 1-3. These exhibits were admitted into evidence without objection. She also offered the Government's request for administrative notice regarding the Islamic Republic of Afghanistan (Afghanistan) as Administrative Notice I. Applicant had no objection to Department Counsel's request, but he asked for the opportunity to present a written statement on the country conditions in Afghanistan. I agreed that he could make such a submission, and I gave him a deadline of March 29, 2019. Applicant testified and offered five exhibits, which I marked as Applicant's Exhibits (AE) A through E. Department Counsel had no objection to Applicant's exhibits, and I admitted the evidence into the record.

After Department Counsel made her closing argument, Applicant requested that he be allowed to provide his closing statement in writing after he had an opportunity to review the transcript of the hearing. I encouraged him to do so out of concern that his hearing impairment might have caused him to not hear something that was said during the hearing. I instructed him to submit his closing statement on or before March 29, 2019, along with his written statement about the country conditions in Afghanistan. On March 20, 2019, he emailed to me three proposed exhibits and his written closing statement. I marked his three exhibits as AE F through H, and I marked his written closing statement

as Hearing Exhibit I. I note that AE H is Applicant's response to Department Counsel's request for administrative notice, but it is in fact more of an evidentiary statement regarding his personal views of the risks associated with his return to Afghanistan in the event he was granted a security clearance. He also wrote about his obligations to the United States. I have also marked the email thread regarding this post-hearing submission as Hearing Exhibit II. Applicant also emailed a list of corrections to the transcript, which I have marked as Hearing Exhibit III. Absent an objection, I admitted AE F through H into the record.

DOHA received the transcript of the original hearing on November 29, 2018, and the transcript of the second hearing date (Tr.) on March 27, 2019.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of facts relating to Afghanistan. Department Counsel provided a summary of the facts, supported by U.S. Government documents pertaining to Afghanistan. I take administrative notice of certain facts set forth in the U.S. Government documents. They are limited to matters that the U.S. Government believes to be accurate and are not subject to reasonable dispute. These facts are set out below in the Findings of Fact.

Findings of Fact

Applicant admitted, with some explanations, all of the eight allegations in the SOR under Guideline B, except part of SOR ¶ 1.c regarding his brother's current employment in Afghanistan. He denied the two falsification allegations under Guideline E. I have incorporated his admissions in my findings of facts. Applicant's personal information in my findings of facts is extracted from GE 1, his April 21, 2016 security clearance application (SCA), unless otherwise indicated by a parenthetical citation to the record.

After a thorough and careful review of the pleadings, the hearing transcript, as corrected by Applicant in Hearing Exhibit III, and the documentary evidence, I make the following findings of fact.

Applicant is 66 years old. He was born and raised in Afghanistan. He earned a medical degree there in 1976. He married his first wife in 1984 in Pakistan. They have two children, ages 33 and 32. Both children were born in Pakistan, are citizens of the United States, and reside in this country with their mother, who Applicant divorced in 2005. His first wife is a naturalized U.S. citizen. In 1991, he had a third child out of wedlock. This child was born in the United States. Applicant has limited contact with these children. Applicant remarried in 2005 to a woman who is an Afghan citizen. They married in Afghanistan and have one child, age ten, who was born in Afghanistan, but is a U.S. citizen. Applicant's youngest child lives with Applicant and his second wife in the United States. His wife has applied for U.S. citizenship and her naturalization interview was scheduled for late March 2019. At the time the record closed, the record contained no evidence showing that she had obtained U.S. citizenship. (Tr. 32, 36, 88-89.)

Applicant's parents were Afghan residents and citizens and are deceased. His mother-in-law and father-in-law were also Afghan residents and citizens and are deceased. Applicant had six sisters and one brother. His brother is deceased, as are two of his sisters. The remaining four sisters are citizens and residents of Afghanistan. Each of his sisters married, but three are now widowed. His brother-in-law is an elementary school teacher in a rural village working for the Afghan Ministry of Education, though in his SOR Response, Applicant claimed that his brother-in-law ceased teaching in 2008 and now works for a private company. His explanation of the discrepancy was confusing and centered on what entity paid the teachers in Afghanistan, not whether he was or was not a teacher. In his SCA, Applicant reported that he has quarterly contact with his four sisters, either by telephone or in person. At the hearing, he testified that he speaks with them more frequently now, especially after the recent death of one of their husbands. He explained that because his sisters are uneducated, their conversations are limited to family issues. (Tr. 48-52, 72-73, 100.)

Applicant's wife also has family in Afghanistan. One of her brothers teaches at a private university in that country. Applicant vaguely suggested that his wife may have other siblings or family members there, but that none of them hold significant positions in Afghan society. (Tr. 89-90.)

In his SCA, Applicant reported that between 2009 and 2016 he traveled to Afghanistan nine times for business reasons, often for extended periods of time, and once to visit family members. He has traveled to Afghanistan ten to fifteen times since he immigrated to the United States. He stayed with his family during his visits, except when he was in the country to work, which is discussed below. Applicant, his wife, and his youngest child were last in Afghanistan in December 2018 for the engagement of a grandchild of his deceased brother. (Tr. 32-35, 37, 39.)

Applicant's deceased brother had four sons. They are all citizens and residents of Afghanistan. One is a civil engineer. One works for a not-for-profit organization supported by U.S. funds from USAID or a similar funding source. The third son works for a private insurance company, and the fourth is doctor who works as a surgeon. Applicant communicates by email with one of his nephews. (Tr. 45-46.)

The oldest sister of Applicant is a widow with five children. She lives on her deceased husband's farm in the village where Applicant grew up. She is a housewife. The next oldest sister is also a widow and a housewife. She has no children. She lives with Applicant's nephews, the sons of his deceased brother. The third oldest sister is married and has approximately six children. The fourth sister is also a widow. She has five or six children. (Tr. 41-45.)

Applicant has lead a life full of political activism fighting for political and social justice in Afghanistan. After graduating from medical school in 1975, he worked for the Afghan government as a doctor until he was imprisoned in the 1978 to 1980 period by the Russian-backed Afghan government due to his membership in a political party opposed to the Afghan government. In 1980, he was released, and he relocated from

Afghanistan to Pakistan because he feared for his life if he stayed in Afghanistan. In Pakistan, he published an article in a newspaper opposing Islamic extremists in Afghanistan. He then became a target there and was in danger of being killed. (GE 2.)

In 1988, he immigrated to the United States from Pakistan on a student visa to escape the danger he faced in Pakistan. He was 35 years old. He had a one-year scholarship. In 1989, he asked for and was granted political asylum in the United States because of threats against his life following the assassination of his mentor who co-founded with Applicant a health and social services organization in Pakistan to assist Afghan refugees. The colleague was assassinated due to Applicant's newspaper article. As noted below, his interest in the welfare of the Afghan people continued even after he immigrated to the United States. Applicant's exhibits all attest to his strong beliefs in social justice, non-violence, and the importance of educating young people to be responsible citizens. (GE 3 at 1, GE 2 at 1-2; AE A-H; Tr. 61-67.)

In August 1998, he earned a master's degree in public administration at a U.S. university. He became a naturalized U.S. citizen in July 1999, at the age of 46. In the SCA, he lists that he resided in Afghanistan from April 2011 to May 2015 and from August 2008 to October 2010, in other words, for at least 6 of the last 20 years when he held U.S. citizenship. The SCA provides no information regarding his residences prior to December 2005. (GE 3 at 1.)

In 2007, Applicant worked for a year as a contractor as a subject-matter specialist at the U.S. Marine Corps base at Quantico, Virginia. He then worked in Kabul, Afghanistan, for a year as a subject matter expert contractor. From October 2010 to March 2011, he was a part-time language instructor in the United States, while at the same time he was the full-time president of an organization he founded in Afghanistan. He performed in that position from August 2009 to April 2016, and worked out of his home in Afghanistan and traveled once a week to the organization's offices in another part of Afghanistan. In his July 2016 background interview, Applicant explained further that from May 2012 to May 2014, he actually worked full-time at the Afghan Ministry of Center for Narcotics in Kabul and that his work for the other organization was only part-time. He also explained that he was not the president of that organization, just an advisor. Starting in November 2015, he also worked part-time as a security guard in the United States. (GE 3 at 2-3; Tr. 58-67.)

In April 2016, Applicant was offered a position with a U.S. defense contractor to work as a linguist, which requires a security clearance. If granted a clearance, he will live in Afghanistan and work with the U.S. military. As of the date of the hearing, he was still working as a security guard in this country. He is also the "Chief Operational Officer" of an organization that addresses issues important to immigrant communities in the United States. (GE 3 at 2-3; Tr. 58-67; AE C.)

Applicant explained in his SOR Response that his work in 2012 to 2014 in Afghanistan was a contract position on a USAID-sponsored project. He was paid with funds provided by USAID, though his point of contact in the ministry was the Afghan

Deputy Minister of Counter Narcotics. Formally, he worked for part of the Ministry of Finance of Afghanistan, a government agency, and was assigned to provide technical assistance to the Afghan counter-narcotics government agency. Applicant had numerous meetings with the Deputy Minister. (Tr. 53-60.)

Applicant also reported that he had contact for one year with the current president of Afghanistan before his election in May 2014. Applicant provided advice to the then-candidate on counter-narcotics issues. His actual contact with the future president was through written reports for the candidate. He testified that he only met the future president twice in meetings with others. In a 2016 security screening interview, he admitted that he was highly involved in an organization that worked closely with the Afghan government and that he has worked closely with the current president of Afghanistan. He was offered a position with the Afghan government and was told to wait until after the election so he could assume the position. He waited one year after the election, but in the end he was told that he was not going to be appointed. In May 2015, he returned to the United States. He has had no contact with the Afghan president since May 2015. (Tr. 53-60; GE 2.)

As noted, Applicant has spent a substantial amount of time living and working in Afghanistan during the 2008 to 2015 period. While working in support of U.S. interests, he was also working to help the people of Afghanistan. During his time in Afghanistan, he kept a bank account in a local bank to deposit his salary and to pay living expenses. When he left the country in May 2015, he withdrew most of the funds in the account. (GE 2 at 3, 6-7; 14; Tr. 53-58.)

In the SCA, Applicant answered in the negative a question that asked “Has any foreign national in the past seven (7) years offered you a job, asked you to work as a consultant, or consider employment with them?” His answer was incorrect because he was offered a position by a foreign national that he thought would materialize after the 2014 presidential elections in Afghanistan. He waited for one year after the election, believing that offer was a real opportunity. In his SOR Response, he responded to the allegation by writing that while he was consulting for the Afghan government in the 2012 to 2014 period, he was actually working for USAID. This response missed the point of the falsification allegation. His SCA answer failed to disclose an offer to work for the Afghan government. When pressed on the issue during his security screening interview, he offered the same inconsistent response about the offered position. He repeated that approach at the hearing, emphasizing the consulting job he had before the presidential election, not the job offer to work in Afghanistan after the election that he waited for a year to begin. His testimony did not clarify his reasoning for his negative response to this question. The source of the funds to pay his salary in a government job was irrelevant to whether a foreign national offered him a job or asked him to work as a consultant. (Tr. 70-71; GE 2 at 4, 7.)

A separate question asked “Have you or any member of your immediate family in the past seven (7) years had any contact with a foreign government, its representatives, whether inside or outside the U.S.?” Again he answered “No,” and in his SOR Response he defended his response as a misunderstanding of the meaning of the word “contact” in

the question. He replied that in the Afghan culture the word “contact” has a more personal meaning than a working relationship. He argued that the nature of his relationship with the Afghan government officials he came to know while working there was not personal. In answering this question in the negative, he was applying his understanding of what the word “contact” meant. He made the same point at the hearing, using the phrase “we Afghans” in reference to how he viewed the question. Somewhat inconsistently, he admitted in his SOR Response the allegations in SOR ¶¶ 1.e and 1.f that he had “contact” with two senior Afghan government officials, one of which was the president of Afghanistan. (Tr. 67-70.)

Applicant submitted several exhibits for my consideration. I have reviewed them carefully. They explain in depth his personal philosophy and beliefs. These exhibits confirm my impression of Applicant when he testified that he was a serious, thoughtful person with deep convictions. In the past, those convictions have caused him to be incarcerated or threatened, but they have also led him to seek to better the sometimes oppressive conditions of his fellow Afghans. Those experiences have not changed his commitment to speak out when necessary. He is committed to the best interests of both Afghanistan and the United States. However, I found some of his testimony on key points to be lacking in candor. He tried hard to provide testimony that would reduce the risk of an unfavorable clearance decision. It was clear that it was very important to him to be granted a clearance so he could return to Afghanistan. The security screening interviewers reported that they had the same reaction to some of Applicant’s comments. (AE A-H; GE 2; Hearing Exhibit I.)

Administrative Notice

Afghanistan is presently an Islamic Republic with a democratically elected president. The country has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union withdrew from Afghanistan, fighting continued among the various ethnic, clan, and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The coalition sought to oust al-Qaeda, Osama bin Laden, and other terrorists seeking to attack the United States from Afghanistan. The new democratic government took power in 2004 after a popular election.

A U.S. State Department Travel Advisory remains in effect for Afghanistan under which the State Department warns U.S. citizens against travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. Travel to all areas of Afghanistan remains unsafe due to the ongoing risk of kidnapping, hostage-taking, suicide bombings, military combat operations, landmines, terrorist and insurgent attacks, banditry, armed rivalry between political and tribal groups, militant attacks, direct and indirect fire, and insurgent attacks, including attacks using vehicle-

borne or other improvised explosive devices. Attacks may also target official Afghan and U.S. governmental convoys and compounds, foreign embassies, military installations, and other public areas.

No province in Afghanistan is immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other foreign nationals at any time. Extremists associated with various terrorist networks and members of other armed opposition groups are active throughout the country and remain violently opposed to the Afghan government and the U.S.-led Coalition Forces. These terrorist groups have attacked Afghan, Coalition Forces, and U.S. targets with little regard for or with the express intent to cause civilian casualties. Widespread human rights abuses are also reported.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The SOR sets forth eight allegations under Guideline B. SOR ¶ 1.a alleges that Applicant’s wife is a citizen of Afghanistan and SOR ¶ 1.b alleges that his four sisters are citizens and residents of Afghanistan. SOR ¶ 1.c alleges that his brother-in-law is a citizen and resident of Afghanistan and is employed by the Afghan Ministry of Education. SOR ¶ 1.d alleges that Applicant maintains contact with other family members who are citizens and residents of Afghanistan. The four remaining allegations, SOR ¶¶ 1.e through 1.h, under Guideline B allege Applicant’s contact with the current President of Afghanistan and an Afghan government official during the May 2012 to May 2014 period, his offer of employment with the Afghan government as an advisor, and his maintenance of an Afghan bank account.

The security concern under this guideline is set out in AG ¶ 6, as follows:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual maybe 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.

The evidence establishes the following disqualifying conditions:

AG ¶ 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;

AG ¶ 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; and

AG ¶ 7(e): shared 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.

Applicant has close connections to his wife, four sisters, brother-in-law, and at least one son of his deceased brother. They are all citizens of Afghanistan and with the exception of his wife, are all residents of that country. Further, there is an articulated heightened risk associated with having ties to family members in Afghanistan, due to the activities of terrorist organizations and insurgents operating within its borders. Applicant's past contact and association with and his work for the current President and a deputy minister raise Applicant's visibility in the country, which exposes him and his family there to an even greater risk than those without such contacts. He has returned to Afghanistan as recently as December 2018 despite the State Department's travel advisory against doing so, which increases the risk of Applicant being identified as an Afghan cooperating with the Afghan and U.S. governments. The evidence, taken as a whole, is sufficient to raise these disqualifying conditions. AG ¶¶ 7(a), 7(b), and 7(e) apply to Applicant's relationships with the foreign contacts and connections alleged in the SOR. I do not find, however, that the admitted and proven allegations in SOR ¶¶ 1.g and 1.h regarding a job offer with the Afghan government and Applicant's small balance in an Afghan bank account establish any of the disqualifying conditions in Guideline B.

The following mitigating conditions are potentially applicable:

AG ¶ 8(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 United States;

AG ¶ 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;

AG ¶ 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

AG ¶ 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.

Applicant has not presented sufficient evidence to support a conclusion that any of the above-mitigating conditions apply. It cannot be concluded that it is unlikely Applicant will be placed in a position of having to choose between the interests of his foreign relatives or the Afghan government and the interests of the United States. He still thinks of himself in terms of "we Afghans." Applicant has been a U.S. citizen for a number of years, but he has spent a significant amount of time in the most recent years in Afghanistan continuing his ties there and not developing his ties in the United States. He presented insufficient evidence of the nature of his ties and loyalties in the United States. Furthermore, the record evidence does not support a conclusion that his contacts and communications with his foreign relatives are casual and infrequent. He and his wife took their daughter to Afghanistan to visit relatives as recently as December 2018 while this matter was pending. He also talks on the phone with his sisters regularly. Accordingly, AG ¶¶ 8(a), 8(b), and 8(c) have not been established. To the extent that Applicant bank account in Afghanistan raises a security concern, AG ¶ 8(f) applies.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15 as follows:

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.

The following disqualifying condition under Guideline E is potentially applicable:

AG ¶16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement,

or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The record evidence support the conclusion that Appellant deliberately concealed information from the U.S. Government in his responses to two questions on the SCA, as alleged in the SOR. His attempts to rationalize his SOR responses demonstrate that he deliberately chose to answer the questions as he did rather than just simply provide the requested information. His rationales regarding the funding source of his work and the Afghan definition of the word “contact” do not justify his concealment of his job offer in Afghanistan and his close working relationships and history with high Afghan government officials. AG ¶ 16(a) is established.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

In his May 2016 security screening interview, Applicant mentioned that he received a job offer to advise the new Afghan government and that he stayed in Afghanistan for a whole year waiting for the job to begin. Arguably, this disclosure to his interviewers could be viewed as a prompt effort to correct the falsification in his SCA. However, he equivocated and ended up telling the story that he was merely waiting for another USAID-funded contractor position. The screeners made it clear in their report that they felt he was being inconsistent and was not fully candid. His testimony at the hearing was also lacking in candor and credibility. As a result, the good-faith requirement of this mitigating condition is not present. AG ¶ 17(a) is not established with respect to SOR ¶ 2.a.

The same is true with respect to SOR ¶ 2.b. Appellant discussed his interactions with the future president of Afghanistan during his screening interview, but at the hearing he downplayed the level of the interactions to merely writing papers for the presidential candidate and attending two meetings at which the candidate and future president was in attendance. These circumstances do not satisfy the good-faith mitigation requirements of AG ¶ 17(a).

Applicant's two falsifications are not minor. They go right to the issue of his trustworthiness on issues that he perceived might damage his chances of being adjudicated eligible for a security clearance. It is clear from the hearing that this medically trained doctor who cannot practice his profession in the United States and must work as a security guard, is willing to muddle his personal history in an effort to be adjudicated as

qualified for a position as a linguist in Afghanistan and be able to return to his native country. The two falsifications cast doubt on Applicant's reliability, trustworthiness and judgment. He has not carried his burden of persuasion to establish AG ¶ 17(a).

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d). The factors are:

- (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.

I have incorporated my comments under Guidelines B and E in my whole-person analysis. After weighing the disqualifying and mitigating conditions under these guidelines and evaluating all of the evidence in the context of the whole person, I conclude Appellant has not mitigated the security concerns raised by his foreign contacts and connections and his personal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

In light of all the record evidence, I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

John Bayard Glendon
Administrative Judge