



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



In the matter of:

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ISCR Case No. 18-00117

Applicant for Security Clearance

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

02/19/2019

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns arising from his connections to family and friends in Afghanistan. He did not mitigate the financial considerations security concerns related to his unpaid delinquent debts. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

History of Case

On May 12, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 2, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence), and Guideline F (Financial Considerations). On March 23, 2018, Applicant answered the SOR in writing and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3)

On July 18, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 10 Items, was mailed to Applicant and received by him on September 20, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit a response to the FORM, submit additional material, or file objections to its contents. Hence, Items 1 through 10 are admitted into the record. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on December 13, 2018.

Procedural Ruling

I take administrative notice of facts concerning Afghanistan. Those facts are set out in the Government's Request for Administrative Notice - Islamic Republic of Afghanistan, marked as Item 7. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 26 years old and married. He was born in Afghanistan in 1991. In 1992, his father, a commander in the Afghan military, was assassinated. Shortly thereafter, his mother fled to Pakistan with Applicant, his sister, and his brother. They remained in Pakistan until 2001 when they immigrated the United States as refugees. They became U.S. citizens in 2007 and continue to reside in the United States. (Item 4)

Applicant graduated from high school in 2009. He subsequently obtained student loans and attended a U.S. college between August 2010 and May 2015. He did not complete a degree. While in college, he was unemployed for some months and financially supported by his brother. (Items 4-6)

Applicant visited Afghanistan multiple times since becoming a U.S. citizen in 2007: from December 2013 to January 2014; June 2014 to July 2014; December 2014 to January 2015; March 2015; July 2015; August 2016; June 2017; and August 2017. In December 2013, Applicant married his wife in Afghanistan. She is an Afghanistan citizen and was residing there at the time. (Items 4 and 6) Applicant and his wife had a son born in Afghanistan. In 2017, his wife moved to the United States with their young son and she became a permanent U.S. resident. (Item 3)

Applicant's mother-in-law and father-in-law are citizens and residents of Afghanistan. His mother-in-law is a homemaker and his father-in-law is a taxi driver. His father-in-law is also Applicant's uncle. Applicant has three brothers-in-law. Two are citizens and residents of Afghanistan. One brother-in-law is citizen of Afghanistan and a permanent U.S. resident. That brother-in-law previously worked for the Afghan police. Applicant has monthly contact with his in-laws residing in Afghanistan. Applicant stayed with his in-laws when he visited Afghanistan. (Item 3, 4, 6)

Applicant has eight friends and a cousin, who are citizens and residents of Afghanistan. He has yearly contact with six friends and quarterly contact with two friends. He contacts his cousin yearly. (Item 5) Applicant said that since his wife has moved to the United States, he no longer needs to maintain contact with multiple family members or friends in Afghanistan. (Item 3)

Based on credit bureau reports (CBR) from May 2017, January 2018, and May 2018, the SOR alleged six debts that became delinquent between 2014 and 2018, and totaled over \$14,503. They included an automobile repossession, three unpaid credit cards, an unpaid cell phone bill, and unpaid tuition. (Items 8, 9, 10)

In his Answer, Applicant stated that he is responsible for resolving the alleged debts. He said that he is making payments on the \$371 credit card debt. The most recent CBR confirmed that the \$371 debt listed in SOR ¶ 1.a had a balance of \$143 as of April 2018. (Item 10). He also stated that he paid the \$143 cell phone debt, but there is no evidence to confirm that status. Applicant said he intended to pay the other four debts when he has more money. (Item 3)

According to the May 2018 CBR, Applicant has student loans that total about \$53,350. SOR ¶ 1.f alleged that one of those loans has a delinquent balance of \$2,607. Applicant has not made arrangements to make payments on that loan. He makes nominal payments of \$1 to \$3 on several other student loans. (Item 10)

Applicant was employed full-time from October 2015 to January 2016 with a temporary staffing firm. He then obtained a full-time position with a healthcare company. He continues to work for that company while his application for a security clearance is pending. (Item 6)

Applicant admitted that he provided \$19,400 of financial support to his wife from 2013 until 2017, before she moved to the United States. Throughout the case file, he stated that as a consequence of sending her money and traveling to Afghanistan, he did not have sufficient money to pay the alleged delinquent debts. (Items 3-6)

Applicant did not provide a current budget or other information related to his financial obligations from which to determine his current financial reliability, compliance with payment agreements, or ability to maintain payments on the debts. There is no evidence that he has financial investments or other monetary connections in the United States. Applicant asserts that his loyalty is to the United States. (Item 2)

Afghanistan

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Afghanistan. Specifically, Afghanistan faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups are increasingly active throughout Afghanistan. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all travel to Afghanistan should be

avoided. Of particular significance are the poor human rights situation; the active and hostile presence of Al Qaida, the Taliban, the Haqqani Network; and other insurgent and extremist groups that generate instability and openly attack police, security and military forces, the local populace, and U.S. persons and interests.

Policies

The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD after June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national

security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline B: Foreign Influence

¶ 6: The security concern relating to the guideline for foreign influence is set out in AG

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 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.

The guideline describes conditions that could raise security concerns and may be disqualifying under AG ¶ 7. Two are potentially applicable in this case:

- (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;¹ and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to

¹ 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, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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.

Afghanistan has significant internal anti-western terrorism threats that operate openly and contrary to U.S. interests. Accordingly, Applicant's close connections and frequent visits to family and friends there generate significantly heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

Applicant has ongoing connections with his in-laws and friends, who are citizens and residents of Afghanistan. He frequently visited those in-laws and provided support to his wife from 2013 until 2017 while she lived there with her parents. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Afghanistan seek intelligence or engage in behaviors that are hostile to the United States' interests. Applicant's relationship with family members and friends creates a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help family members living in Afghanistan. The evidence is sufficient to raise a disqualification under AG ¶ 7(b).

After the Government produced sufficient evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on these facts:

(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;

(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; 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.

Considered in light of the substantial anti-western insurgent and terrorism threats in the region, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his family ties there. He has perfectly legitimate and appropriately close relationships with family members and friends now living in

Afghanistan, and a strong interest in protecting those people. His communication and contact with them are neither casual nor infrequent. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and (c).

The evidence also fails to establish significant mitigation under AG ¶ 8(b). A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has some connections to the United States: his mother, and two siblings are citizens and residents of the United States; he graduated from a U.S. high school in 2009; he is currently employed with a U.S. healthcare company; and in 2017, his wife and child came to live with him in the United States. However, those connections do not outweigh his strong and recent connections to Afghanistan where he spent a significant amount of time between 2013 and 2017, met his wife, married, and had his son. While there, he stayed with his in-laws and saw friends. His father-in-law is also his uncle. There is insufficient evidence to conclude that Applicant's U.S. ties are so deep and longstanding that he can be expected to resolve any conflict of interests involving to his family in Afghanistan in favor of the U.S. interests. Accordingly, he did not fully mitigate the security concerns raised under this condition.

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting

classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information.²

Based on his admissions and CBRs, Applicant has a history of being unable and unwilling to meet financial obligations, which began in 2014 and continues into the present. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems. Four are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The delinquent debts alleged in the SOR arose between 2014 and 2018; five of the debts remain unresolved. AG ¶ 20 (a) does not apply, as his failure to address the delinquent debts over the past years casts doubt on his reliability and judgment. Applicant stated that he could not pay his debts after he married in 2013 because he was sending his wife financial support and traveling to Afghanistan to visit her. Both of those circumstances were within his control. He did not provide evidence that he attempted to responsibly manage his financial obligations. AG ¶ 20(b) does not apply. There is no evidence that Applicant participated in credit or financial counseling, and that his delinquent debts are being resolved and under control. AG ¶ 20(c) does not apply. He provided evidence that he was paying the debt in SOR ¶ 1.c, establishing mitigation under AG ¶ 20(d) for this debt. He did not submit evidence that he made-good faith efforts to repay or resolve any of the other five debts. AG ¶ 20(d) does not apply to them.

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal results of his family situation. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He expressed loyalty to the United States. Although his immediate family members now live in the United States, he (and presumably his wife) continues to have strong connections to Afghanistan, as demonstrated by his numerous trips there between 2013 and 2017, and consistent contact with family and friends since then. As a consequence of those relationships, he has chosen not to prioritize the resolution of financial obligations he incurred in the United States, which establish the security concerns raised under Guideline F.

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant failed to mitigate the security concerns pertaining to foreign influence and financial considerations. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b through 2.f:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge