



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



In the matter of: )  
)  
) ISCR Case No. 18-00341  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Applicant's Counsel

May 22, 2019

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On February 13, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on February 28, 2018 (Answer); which included Applicant's Exhibits (AppXs) A1~B2, and eventually requested a hearing before an administrative judge. (Notice of Representation.) The case was assigned to me on March 7, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 8, 2019, scheduling the hearing for April 23, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 4, which were admitted into evidence, and GX 5 for Administrative Notice. Applicant testified on his own behalf. Applicant presented 34 documents, which I marked AppXs C1~L, which

were also admitted into evidence. DOHA received the transcript of the hearing (TR) on May 6, 2019.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a seven-page summary of the facts, supported by 11 Government documents pertaining to Afghanistan, identified as GX 5. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted all the allegations in SOR, except for SOR allegation ¶ 1.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor. (GX 1 at pages 5 and 16.) He has been employed as a linguist with the defense contractor since January of 2017. (GX 1 at page 16.) In August of 2017, while on patrol with U.S. Marines, Applicant was wounded by a suicide bomber. (TR at page 38 line 14 to page 40 line 25, at page 82 lines 6~25, and AppX C1.) He has submitted eight letters of support (AppXs A, E and J), to include one from a Brigadier General (AppX E5), and numerous Certificates of Appreciation (AppX H1~9).

### **Guideline B - Foreign Influence**

1.a. Applicant denied that his mother is a citizen and resident of Afghanistan, as she is now deceased. (TR at page 43 lines 16~18, and at page 44 lines 2~6.) This occurred in January of 2018, and Applicant could not attend her funeral as he could not leave the protection of his military post. (*Id.*)

1.b. Applicant admits that three brothers are citizens and residents of Afghanistan. (TR at page 50 line 10 to page 52 line 3, and at page 53 line 14 to page 55 line 6.) Two of these brothers are merchants, and the third a teacher. (*Id.*) To the best of his knowledge and belief none of these brothers are connected to the Afghan government.

1.c. Applicant admits that a fourth brother, also a citizen and resident of Afghanistan, was a "Clerk" for the Afghan government. (TR at page 52 line 4 to page 53 line 12.) He is currently unemployed, but most recently worked for a U.S. company. (TR at page 55 lines 7~21, and at page 69 lines 7~23.)

1.d. Applicant admits that between 2010~2016, he gave a total of about \$5,000 to a brother, in support of his, now deceased, mother. Applicant disclosed this financial

support to the U.S. Government, in January of 2011, as evidenced by his Counterintelligence-Focused Security Screening Questionnaire (CFSSQ). (TR at page 42 line 7 to page 43 line 18, at page 55 line 22 to page 56 line 11, and GX at page 7.)

### **Guideline E - Personal Conduct**

2.a. Applicant answered “No” on his February 2017 e-QIP to the question: “Have you EVER provided financial support for any foreign national?” (GX 1 at page 51.) He mistakenly thought this question did not apply to his immediate family. (TR at page 56 line 12 to page 60 line 6, and at page 71 line 1 to page 74 line 24.) Applicant had already disclosed his mother’s financial support, through his brother, in his January 2011 CFSSQ. He reaffirmed his 2011 admission, just 12 days after he executed his e-QIP, when he again executed a February 2017 CFSSQ. (GX 4 at pages 1 and 2.) I find no willful falsification, here.

2.b. Applicant admits that he resided in the United States illegally from about 2006~2010. In about 2003, as an 18 year old, he started working as an interpreter for U.S. Forces in Afghanistan. (TR at page 22 lines 5~13, and at page 28 line 21 to page 31 line 12.) In 2006, while Applicant was training in the United States, he discovered he was on a “hit list” if and when he returned to Afghanistan. (*Id.*, and 60 line 7 to page 61 line 9, and at page 68 line 11 to page 69 line 2.) As a result, he went to live with a half-brother in California from 2006~2010. (*Id.*) Applicant disclosed his illegal status when he applied for and was granted a Green Card. (TR at page 34 line 17 to page 36 line 11, and at page 37 line 1 to page 38 line 13.) He was again deployed back to Afghanistan in support of U.S. forces, and while there applied for and was granted U.S. citizenship. (*Id.*)

### **Notice**

I take administrative notice of the following regarding Afghanistan. A U.S. Department of State Travel Advisory remains in effect for Afghanistan. Extremist groups and kidnapping syndicates are actively targeting foreign nationals. Decades of disorder and warfare have made Afghanistan fertile territory for international terrorism.

### **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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. According to AG ¶ 2(a), the entire process is a conscientious

scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for 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.

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

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

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B - Foreign Influence**

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

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 notes several conditions that could raise security concerns under AG ¶ 7. Three 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;

(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

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion.

Applicant has siblings who are citizens and residents of Afghanistan, and he is on a Taliban "hit list." The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee.

Applicant is putting his life at risk as an interpreter for U.S. Forces. He was almost killed by a suicide bomber, but has returned to Afghanistan in service of his

country. His connection with his foreign relatives is clearly outweighed by his service and allegiance to the United States. Foreign Influence is found for Applicant.

### **Guideline E - Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

- (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; and
- (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant arguably failed to answer his February 2017 e-QIP correctly. He was also in the United States illegally for about four years. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

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

(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

Applicant disclosed to the Government, in 2011 and again in February of 2017; the fact that he was providing financial aid to his mother, when he executed his CFSSQs. In light of these disclosures, he clearly misinterpreted the e-QIP's question. More than nine years ago, Applicant feared for his life; and as a result, resided in the United States illegally for about four years. He is now a U.S. citizen, and is putting his life at risk serving his country in Afghanistan. Personal Conduct is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all 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.

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

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

Applicant has a distinguished record of serving U.S. Forces in Afghanistan, as evidenced by those serving with him, to include a Brigadier General. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence and Personal Conduct security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge