



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



In the matter of: )  
)  
) ISCR Case No. 18-01135  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

04/23/2019

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s mother, two sisters, spouse, and three children are citizens and residents of Afghanistan, and he has frequent contact with them. His finances were harmed by unemployment, gambling, and paying necessary expenses to support his family in Afghanistan. He has several substantial unresolved debts. Foreign influence and financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 4, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On September 4, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, established in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines B (foreign influence), F (financial considerations), and E (personal conduct).

On October 11, 2018, Applicant responded to the SOR and requested a hearing. (HE 3) On December 26, 2018, Department Counsel was ready to proceed. On January 25, 2019, the case was assigned to me. On February 28, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 14, 2019. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits, Applicant did not object to or offer any exhibits; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 21-24; GE 1-6) On March 26, 2019, DOHA received a transcript of the hearing. The record was held open until March 28, 2019. (Tr. 93) Applicant provided 25 pages of documents after his hearing, which were admitted without objection. (Applicant Exhibit (AE) A pg. 1-25)

### **Procedural Rulings**

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Afghanistan. (Tr. 24, 90-91; HE 5) There were no objections to me taking administrative notice of facts concerning Afghanistan, and I granted Department Counsel's request for administrative notice. (Tr. 25; HE 4)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Portions of the administrative notice requests are quoted without quotation marks and footnotes. I have also taken administrative notice of basic facts about the history, geography, population, and diplomatic relationship between the United States and Afghanistan from the U.S. State Department Background Note for Afghanistan (Nov. 28, 2011), <https://2009-2017.state.gov/outofdate/bgn/afghanistan/191350.htm>. (HE 4)

Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 16-17) Department Counsel moved to withdraw the allegations made under Guideline E (personal conduct) in SOR ¶ 3. (Tr.12-16) Applicant did not object; I granted the motion; and I crossed through, initialed, and dated the allegations in SOR ¶ 3. (Tr. 15-16; HE 2)

## Findings of Fact<sup>1</sup>

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d-1.g, and 2.a-2.g. (HE 3) His admissions are incorporated herein as findings of fact. He also provided extenuating and mitigating information. (HE 3) After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 36 years old, and he worked as a linguist from 2003 to 2011, and from 2012 to 2013. (Tr. 7, 27) He is seeking to resume his employment as a linguist in Afghanistan. In 2001, he graduated from high school. (Tr. 6) He has not attended college. (Tr. 6) He has not served in the military of any foreign country. (Tr. 7) In 2007, he married, and his children are ages 5, 8, and 11. (Tr. 7) Applicant's spouse, children, several siblings, several in-laws, and mother are citizens and residents of Afghanistan. (Tr. 41, 47)

In 2009, Applicant immigrated to the United States, and in 2015, he was naturalized as a U.S. citizen. (Tr. 17) Applicant's spouse and children were born in Afghanistan. (Tr. 41, 88) In 2014, he brought his spouse and children to the United States, and then four months later, he returned them to Afghanistan because he was having financial problems, and his mother missed them. (Tr. 19, 42, 88) Applicant's spouse and children have received U.S. permanent residence visas or green cards. (Tr. 41-42)

In 2011, Applicant's mother, who is a citizen and resident of Afghanistan became ill, and Applicant left his linguist position to care for his mother from 2011 to 2012, and in 2013. (Tr. 28) Applicant was mostly unemployed from 2013 to January 2015. (Tr. 29-30) He was employed from January 2015 to November 2015. (Tr. 29-30) He was unemployed from November 2015, to February 2016. (Tr. 30) He lived in Afghanistan from November 2015, to February 2016, with his mother. (Tr. 30) He worked in the United States as a truck driver from February 2016, to the present. (Tr. 30-31) His current income is about \$5,500 per month. (Tr. 32) He sublets part of an apartment when he is not traveling. (Tr. 35) He has a bank account in the United States. (Tr. 35)

Applicant's father passed away more than 30 years ago. (Tr. 37-38) Applicant's mother and children live together in Afghanistan. (Tr. 39) Applicant inherited the home where his family resides in Afghanistan from his father. (Tr. 20-21, 38-39) Applicant estimated the value of the home where they live at about \$60,000. (Tr. 40) Applicant pays the utilities and other expenses for the home. (Tr. 40) Even if his family leaves their home in Afghanistan, Applicant intends to retain it as a rental property. (Tr. 41)

Applicant's spouse and mother have never been employed outside their home. (Tr. 44, 48) His spouse and children are totally dependent on Applicant for financial support. (Tr. 19-20, 45) He provides them about \$1,000 to \$4,000 each month. (Tr. 45-46, 49-50) Recently, he has been sending the funds to his family in Afghanistan through his brother-in-law who lives in the United States. (Tr. 50) He communicates with his

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<sup>1</sup> The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

family, including his mother, children, and spouse, in Afghanistan on a daily basis. (Tr. 46, 48) His most recent personal visit to Afghanistan was for three months in 2017. (Tr. 47) Applicant plans to eventually move his spouse, children, and mother from Afghanistan to the United States. (Tr. 44)

Applicant's sister is married, has seven children, and lives in Afghanistan. (Tr. 51; SOR ¶ 1.c) Her husband works in his business, and does not work for the Afghan Government. (Tr. 52) His sister and her husband are poor, and Applicant occasionally provides financial support for them. (Tr. 52, 86) Applicant communicates with his sister about once a month, and he visits her when he goes to Afghanistan. (Tr. 52)

Applicant has another sister who is married; she has four children; and they live in Afghanistan. (Tr. 52-53; SOR ¶ 1.d) Her husband works for the Afghan Government in a civilian position. (Tr. 54) Applicant communicates with his sister about every one to two months, and he visits her when he goes to Afghanistan. (Tr. 54)

Applicant's parents-in-law are citizens and residents of Afghanistan. (Tr. 54-55; SOR ¶ 1.e) His father-in-law worked for the Afghan Government for 40 years at a low-level position, and he is now retired. (Tr. 55) Applicant communicates with his parents-in-law about every two or three months, and he visits them when he goes to Afghanistan. (Tr. 55-56) Applicant has seven siblings-in-law who are citizens and residents of Afghanistan. (SOR response to ¶ 1.f)

One of Applicant's four brothers live in the United States. (Tr. 57) Three of his brothers and their spouses and children live in Afghanistan. (Tr. 57-58) Applicant does not intend to live permanently in Afghanistan. (Tr. 89) His relationships with his three brothers and their families are not described in detail and do not raise a security concern under Guideline B. Applicant prefers to live in the United States. (Tr. 89) He is willing to defend the United States and to risk his life to safeguard the United States. (Tr. 90)

## **Financial Considerations**

The SOR alleges in ¶ 2.a that Applicant had a gambling addiction beginning in about 2012. The SOR alleges in ¶¶ 2.b through 2.g that Applicant borrowed funds in various amounts from friends under false pretenses to support his gambling habit, and he did not repay the debts as follows: in 2014, \$200 (¶ 2.b); in November 2014, \$3,000 to \$7,000 (¶ 2.c); in December 2014, \$1,700 (¶ 2.d); in May 2015, \$300 (¶ 2.e); in October 2015, \$1,100 (¶ 2.f); and in November 2015, \$300 (¶ 2.g). In 2012, he had saved about \$50,000. (Tr. 61) By mid-2014, he had lost all of his savings through gambling. (Tr. 62) When he was in Afghanistan in 2014, he lost about \$15,000 gambling. (Tr. 62, 86-87) Between March 2014, and June 2016, he lost about \$60,000 gambling. (Tr. 63) In total, he lost about \$125,000 gambling. He borrowed about \$10,000 from six friends who live in the United States as listed in SOR ¶¶ 2.b to 2.g to use for gambling. (Tr. 64-65)

Applicant paid the friend in SOR ¶ 2.c \$5,200; however, his friend said Applicant still owes \$1,512. (Tr. 67) He said he paid the debt in SOR ¶ 2.b, and he did not have contact information for the creditors in SOR ¶¶ 2.e and 2.g. (SOR response) He either

paid or offered to repay the friend in SOR ¶ 2.d. (Tr. 65) He has been attempting to contact some friends to whom he owes \$200 or \$300, and he is willing to repay them. (Tr. 68)

SOR ¶ 2.h alleges in about 2014 to 2015, Applicant initiated electronic fund transfers to a credit card, even though he knew he did not have the funds to cover the transfers in his account. He then used his credit card for cash advances to enable him to gamble. (Tr. 69-71; SOR response)

SOR ¶¶ 2.i, 2.j, and 2.k allege three delinquent debts as follows: a charged-off debt owed to a bank for \$19,382 (¶ 2.i); a debt placed for collection for \$2,515 (¶ 2.j); and a debt placed for collection for \$617 (2.k).

For the debt in SOR ¶ 2.i, he borrowed \$12,500 and used the funds to gamble. (Tr. 69-72) In 2016, he made three payments totaling about \$750. He wanted to offer to increase his payments. However, he was unable to make the payment arrangements with the creditor, and he stopped making payments. (Tr. 70, 77-78)

For the debt in SOR ¶ 2.j, he borrowed \$1,500. He used the funds he borrowed to make a payment to address a debt owed to a friend, and he provided some money to his family in Afghanistan. (Tr. 79) He recently offered to pay the creditor \$1,500; however, the creditor wanted \$2,500. (Tr. 79) He is willing to settle the debt; however, he was unable to arrange a settlement that was fair. (Tr. 79-80)

For the debt in SOR ¶ 2.k, he borrowed \$300, and he used the funds to pay for groceries and gasoline in 2015 or 2016. (Tr. 80) He was willing to pay the creditor \$300; however, the creditor wanted \$600. (Tr. 80) He is willing to settle the debt; however, he was unable to arrange a settlement. (Tr. 80-81) Several months before his hearing, he consulted a debt settlement company; however, he did not agree to start the program. (Tr. 84-85)

In June 2016, Applicant told an Officer of Personnel Management (OPM) investigator that he stopped gambling. (Tr. 73) In December 2017, he told an OPM investigator that he gambled after June 2016. (Tr. 73) After June 2016, he said he gambled about six times. (Tr. 73) Since 2016, he has lost more than \$10,000 gambling. (Tr. 74) He said he is trying to control his gambling. (Tr. 74) He has reduced his gambling from two or three times a week to about once a month or less. (Tr. 75, 83) He continues to have brief urges to gamble; however, he is able to resist these urges and not gamble. (Tr. 75) He has watched some documentaries and Internet presentations on gambling addiction; however, he has never received gambling-addiction counseling or therapy. (Tr. 83)

Applicant has little savings and lives month-to-month on his salary. (Tr. 82) In 2015, he received a federal income tax refund, and he used half for gambling and sent the remainder to his family in Afghanistan. His employer owes Applicant about \$8,000, and Applicant expects to be paid soon. (Tr. 82)

## **Character Evidence**

Applicant served with the U.S. Army and Marines on combat patrols in Afghanistan. (Tr. 87; AE A) He received multiple certificates of appreciation and training and letters of support for his service as a linguist in Afghanistan and the United States. (AE A) Letters and certificates lauded his outstanding performance of duty and support of U.S. Forces in a combat environment. (AE A) He contributed to mission accomplishment. (AE A) In 2006, a U.S. Army brigadier general recommended Applicant for special immigrant status because of his contributions to U.S. Armed Forces in Afghanistan in 2005. (AE A at 16)

## **Afghanistan**

Afghanistan is a country in Southwestern Asia that is approximately the size of Texas (249,935 square miles). Pakistan borders it on the east and the south. Iran borders it on the west and Russia to the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. In 2009, the population was about 28 million people with about 3 million Afghans living outside Afghanistan, mainly in Pakistan and Iran, although over 5 million have returned since the removal of the Taliban regime.

Afghanistan is presently an Islamic Republic with a democratically-elected president. Afghanistan 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 at Travel Advisory Level 4-Do not travel. 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 IEDs. 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 United States 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 Coalition Forces. These terrorist groups have attacked Afghan, Coalition Forces, and U.S. targets with little regard for or the express intent to cause civilian casualties.

According to the June 2017 U.S. Department of Defense report on Afghanistan, Afghanistan faces a continuing threat from insurgent and terrorist networks present or operating in the Afghanistan-Pakistan region. Department Counsel's administrative notice lists recent terrorist attacks in Afghanistan resulting in the deaths of hundreds of civilians and military personnel in 2017 and 2018. Although al-Qaeda's core leadership in the Afghanistan-Pakistan border region has been degraded, elements continue to seek safe haven on both sides of the border to regenerate and conduct attack planning.

The United States' extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to its citizens and residents and Afghan government problems developing and complying with the rule of law. A top national security goal of the United States is to establish relationships, cooperation, training, and support of the Afghanistan Government and military in the ongoing war against terrorism.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 "in terms of the national interest and shall in no sense be

a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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 (4<sup>th</sup> 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.



AG ¶ 7 has conditions that could raise a security concern and may be disqualifying 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

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's mother, two sisters, spouse, and three children are citizens and residents of Afghanistan, and he has frequent contact with them. He provides financial support to his mother, one sister, spouse, and three children. He owns the home where his mother, spouse, and children live in Afghanistan. His financial support and frequent contacts with family living in Afghanistan are manifestations of his care and concern for them. He has numerous additional relatives, including in-laws, in Afghanistan that he is not close to.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security [or trustworthiness] eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)). "The presence of close relatives in a country in which terrorists operate and/or which has a poor human rights record is significant in Guideline B cases." ISCR Case No. 11-06925 (App. Bd. Dec. 13, 2013) at 4 (discussing denial of access to classified information because of relatives in Pakistan). "Factors such as the obscurity of foreign relatives or the failure of foreign persons to contact those relatives do not provide a meaningful measure of whether an applicant's circumstances pose a security risk." *Id.*

There are widely documented safety issues for residents of Afghanistan primarily because of terrorists and criminals. Applicant has voluntarily shared in dangers from terrorists and insurgents on behalf of the DOD when he was deployed to Afghanistan as a linguist for a DOD contractor, and he is willing to do so in the future. Numerous linguists, supporting U.S. forces, have family living in countries that have problems with terrorists and criminals. Thousands of United States and coalition armed forces and civilian contractors have served in the Middle East, Afghanistan, Iraq, and Pakistan, and they have been and are targets of terrorists, along with their families, located in those countries.

The mere possession of close family ties with relatives living in Afghanistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person living in a foreign country, this 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. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (App. Bd. May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). These factors are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States, and the situations in those countries places a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member living in or visiting those countries does not pose a trustworthiness or security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in or visiting Afghanistan.<sup>2</sup>

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<sup>2</sup> The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at \*20-\*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign country raise security [or trustworthiness] concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant's immediate family members -- has by virtue of a security clearance [or public trust position]. A person may be vulnerable to influence or pressure exerted on, or through, the person's immediate family members -- regardless of whether the person's family members are prominent or not.

Guideline B security or trustworthiness concerns are not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at \*11-\*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Afghanistan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Afghanistan has a significant problem with terrorism and crime. Applicant’s family in Afghanistan “could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him.” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant’s relationship with his family who are citizens and residents of Afghanistan create a potential conflict of interest because terrorists could place pressure on them in an effort to cause Applicant to compromise classified information. This relationship creates “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Their citizenship and residence in Afghanistan, and Applicant’s relationships with them, have raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(f) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns 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;

(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;

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

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's relationships with his in-laws as alleged in SOR ¶¶ 1.e and 1.f are not sufficiently developed in the record to raise an independent security concern.

AG ¶ 8(b) partially applies to his relationships with his family living in Afghanistan. Applicant has frequent contacts with and provides financial support to his mother, spouse, children, and two sisters who are citizens and residents of Afghanistan.<sup>3</sup> A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." In 2009, Applicant immigrated to the United States, and in 2015, he was naturalized as a U.S. citizen. He has supported U.S. goals in Afghanistan during

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<sup>3</sup> See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in the People's Republic of China "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

multiple deployments to Afghanistan.<sup>4</sup> He is renting part of an apartment and has a small bank account in the United States. He honorably served as a linguist in Afghanistan.

Applicant's support to the DOD in Afghanistan, including the dangers that service entailed, weighs heavily towards mitigating security concerns. Applicant seeks a security clearance to enable him to continue serving in Afghanistan and providing assistance to DOD. He has shown his patriotism, loyalty, and fidelity to the United States during his support to DOD while serving in Afghanistan.

In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of such service on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") See also ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

Applicant's relationship with the United States and service in Afghanistan must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Afghanistan. Applicant has close relationships with family in Afghanistan, and they are at risk from criminals, terrorists, and human rights violations of the Afghan Government.

It is important to be mindful of the United States' huge historical investment of manpower and money in Afghanistan, and Applicant has supported U.S. goals and objectives in that country. Applicant, through his family living in Afghanistan, is a potential target of terrorists, and Applicant's potential access to classified information could theoretically add risk to his relatives living in Afghanistan.

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<sup>4</sup> ISCR Case No. 17-00629 (App. Bd. May 24, 2018) the Appeal Board discussed a translator's multiple tours on behalf of the United States in Iraq, limited time as a resident in the United States, and connections to family living in Iraq. The Appeal Board stated:

In general, an applicant's deployment to a combat zone in support of U.S. forces is not a factor that weighs against his or her national security eligibility. On the contrary, such deployments tend to establish various mitigating conditions such as [Directive] ¶ 8(b) ("there is no conflict of interest . . . because . . . the individual has such deep and longstanding loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest"); [Directive] ¶ 8(d) ("the foreign . . . activities are on U.S. Government business"); and [Directive] ¶ 8(f) ("the value or routine nature of the foreign business . . . is such that [it is] unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.")

*Id.* at 3 (internal footnotes omitted) (remanding administrative judge's denial of security clearance).

In sum, Applicant's connections to his relatives living in Afghanistan are too significant to mitigate in the circumstances Applicant presented. His connections to the United States taken together are not sufficient to overcome the foreign influence security concerns under Guideline B.

## **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, SOR response, and hearing. The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), 19(d), 19(e), and 19(i) requiring additional inquiry about the possible applicability of mitigating conditions.

Six financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,<sup>5</sup> 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, 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>6</sup> and

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<sup>5</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

<sup>6</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of the mitigating conditions fully apply; however, Applicant is credited with some mitigation due to periods of unemployment or underemployment. His mother, spouse, and children reside in Afghanistan, and he has provided substantial support to them. He also made some progress paying his debts. He is credited with mitigating the debts in SOR ¶¶ 2.b (debt for \$200), 2.e (debt for \$300), and 2.g (debt for \$300). He said he paid the debt in SOR ¶ 2.b, and he did not have contact information for the creditors in SOR ¶¶ 2.e and 2.g. The magnitude of the debts in SOR ¶¶ 2.b, 2.e, and 2.g are of low magnitude (\$300 or below), and are owed to friends. He said he would pay all of these debts if he had contact information. He did not provide enough information about his efforts to locate and pay the remaining debts to his friends, which exceed \$1,000 each, and those debts are not mitigated. When he borrowed the funds from his friends, he did not tell his friends that he was borrowing the money to spend on gambling.

Applicant lost about \$125,000 gambling. He currently has delinquent debts. He did not make any payments for more than one year on several delinquent debts, and he does not have any established payment agreements to address them in the near future. He obtained electronic fund transfers without having a balance to support the transfer, which is a deceptive financial practice. See SOR ¶ 2.h. He continued to gamble albeit at a lesser frequency. Although he has received some advice on how to control his gambling, he has not received formal counseling or therapy to address his gambling. There is insufficient evidence to warrant a conclusion that he will not have financial problems in the future due to gambling.

There is insufficient evidence about why Applicant was unable to make greater progress resolving his delinquent debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. He failed to establish that financial considerations security concerns are mitigated.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).



(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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines B and F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 36 years old, and he worked as a linguist from 2003 to 2011, and from 2012 to 2013, in Afghanistan. He is seeking to resume his employment as a linguist in Afghanistan. In 2007, he married, and his children are ages 5, 8, and 11. In 2009, Applicant immigrated to the United States, and in 2015, he was naturalized as a U.S. citizen. Applicant, his spouse, and children were born in Afghanistan. Applicant's spouse and children have received U.S. permanent residence visas or green cards. He provides financial support to his family in Afghanistan. Applicant inherited the home where his family resides in Afghanistan from Applicant's father.

Applicant lost about \$125,000 from gambling over several years. He acknowledges his problem from excessive gambling. He continued to occasionally gamble even after becoming aware through an OPM interview that his gambling raised a security issue. He has delinquent debts that are not in a payment plan. His financial responsibility continues to be a security concern.

Connections to foreign countries must be balanced against connections to the United States. Applicant resided in the United States from 2009 to present, except for several years when he was serving in Afghanistan as a linguist and visits to his family in Afghanistan. He is renting part of an apartment in the United States, and he has a bank account in the United States. He took the oath of allegiance to the United States when he became a U.S. citizen.

Soldiers that served with Applicant in Afghanistan and the United States lauded his diligence, professionalism, and contributions to mission accomplishment in letters and certificates. During Applicant's support of U.S. interests as a linguist in Afghanistan, he made contributions at personal risk on behalf of U.S. combat forces in Afghanistan. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable service in Afghanistan weighs heavily towards mitigation of foreign influence security concerns. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting “Applicant has served as a translator and

as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.”).

A Guideline B decision must take into consideration the geopolitical situation and dangers of the country involved.<sup>7</sup> Afghanistan is a dangerous place due to violence from terrorists and criminals, and Afghanistan’s government does not respect the full spectrum of human rights. Terrorists continue to threaten Afghanistan citizens and residents, the Afghanistan government, the interests of the United States, and those who cooperate and assist the United States. The United States and Afghanistan are democracies, allies in the war on terrorism, and trading partners. They have numerous important common interests.

Applicant has frequent contact with or cares for his mother, spouse, children, and two sisters, who are citizens and residents of Afghanistan. His spouse and children lived in the United States for four months in 2014, and then they returned to Afghanistan. He provides financial support to his mother, two sisters, spouse, and children. Frequent contacts with and financial support for family in foreign countries are manifestations of his care and concern for relatives living in Afghanistan. However, those same close relationships with residents and citizens of Afghanistan raise important foreign influence security concerns.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence and financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

### **Formal Findings**

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.c, 1.d, and 1.g:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a, 2.c, 2.d, 2.f, 2.h, 2.i, 2.j, and 2.k:	Against Applicant

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<sup>7</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

Subparagraphs 2.b, 2.e, and 2.g:	For Applicant
Paragraph 3, Guideline E:	WITHDRAWN
Subparagraphs 3.a through 3.c:	Withdrawn

**Conclusion**

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

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Mark Harvey  
Administrative Judge