



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



In the matter of: )  
)  
) ISCR Case No. 18-01363  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*  
03/19/2019

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his continuation of a security clearance to work as a linguist in the defense industry. Applicant, a native of Afghanistan, mitigated the foreign influence concerns raised by his relationships with his family and wife’s family who had connections with Afghanistan, Turkey, and Iran. A naturalized U.S. citizen since 1992, Applicant mitigated the foreign influence concerns. Clearance is granted.

**Statement of the Case**

On June 18, 2018, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to deny his security clearance.

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<sup>1</sup> The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Applicant timely answered the SOR and requested his case be decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on November 5, 2018. Applicant received the FORM on November 26, 2018. The Government submitted 15 Items, which were entered into the record without objection. Applicant responded to the FORM, which was marked as AE A and entered into the record without objection. The case was assigned to me on February 14, 2019. Based on my review of the documentary evidence, I find that Applicant mitigated the foreign influence security concerns.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about Turkey, Afghanistan and Iran. Without objection from Applicant, I approved the request. The relevant facts are highlighted in the Findings of Fact section, below.<sup>2</sup>

### **Findings of Fact**

Applicant, 59, has worked as a linguist since January 2010 supporting the U.S. Government. He completed security clearance applications in June 2017 and October 2011, and during his counterintelligence (CI) screening in 2012, he disclosed his relatives, and their connections to Turkey and Afghanistan. The SOR (1.a to 1.d) alleges that his brother and wife's family are citizens of Afghanistan and reside in Iran. Applicant, in his answer, denied that his relatives live in Iran. He explained that his brother and one sister-in-law are refugees in Turkey; and that his mother-in-law and other sister-in-law are U.S. residents living in the United States. The earlier connection to Iran is described below.<sup>3</sup> He was granted a security clearance in approximately 2009. He was given a warning about financial issues in 2012. (Items 7, 8)

Applicant was born in Afghanistan and entered the United States in March 1986. He was sponsored by his brother who was under special U.S. immigrant status due to work for the U.S. Embassy in Afghanistan. Applicant reports no foreign military experience. He earned his undergraduate degree in 1983 from a university in Afghanistan. Applicant became a naturalized U.S. citizen in October 1992. In 1993, he married a woman from Afghanistan who was born in Iran.<sup>4</sup> His wife is a naturalized U.S. citizen and as a result of the marriage, Applicant has two children who are U.S. citizens. Applicant's parents are now deceased, but Applicant has two brothers who reside in the U.S. and at least one is a naturalized U.S. citizen. (Items 3, 4)

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<sup>2</sup> The Government's administrative notice summary and attached documents are admitted to the record as Items 13, 14, and 15.

<sup>3</sup> In the past Applicant and his wife travelled to Iran when her family was there. They attended her father's funeral who was a U.S. resident. Applicant has no intention of returning to Iran.

<sup>4</sup> Her family lived in Iran, but fled to Afghanistan. Applicant's wife has one brother in Iran who she is sponsoring to come to the United States.

As to SOR, 1.a, which alleges that Applicant's brother is a citizen of Afghanistan and resides in Iran, Applicant denied the statement. His answer and response to FORM state that his brother is an Afghan citizen who resides in Turkey as a refugee. He lived in Iran for a period of time as reported by Applicant. (Item 4) He moved to Turkey so that his children could receive an education in a country not at war. Applicant speaks to his brother about three times per year. Applicant does not help his brother financially. (AE A)

As to SOR 1.b, which alleges that Applicant's mother-in-law is a citizen of Afghanistan, Applicant admitted, but noted in his Response to FORM that his mother-in-law is a U.S. resident and lives in the United States with his family. She is a widow. She is not affiliated with the Afghan government and does not know the nature of Applicant's work. His mother-in-law also has two sisters who live in the United States. (Item 11)

As to SOR allegation 1.c, Applicant denied that his sister-in-law is a citizen and resident of Afghanistan. His wife's sister is a U.S. resident and lives with Applicant and his family. She works and Applicant does not support her. She does not know the nature of Applicant's work. (AE A)

As to SOR allegation 1.d, Applicant denied that his sister-in-law resides in Iran. She is married to his brother is an Afghan citizen who is living in Turkey as a refugee. He has limited contact with her and perhaps speaks on special holidays. She does not know the nature of Applicant's work. (AE A)

### **Administrative Notice**

The Islamic Republic of Afghanistan is currently under a U.S. Department of State Travel Advisory due to crime, terrorism, civil unrest, and armed conflict. Attacks have targeted official Afghan and U.S. Government convoys and facilities, foreign embassies, military installations, commercial entities, non-governmental (NGO) offices, hospitals, residential compounds, places of worship, restaurants, hotels, airports, and schools.

Terror attacks have continued into 2018, including an April 30, 2018, attack in Kabul that killed 29 people and wounded dozens more, and a series of September 11, 2018, attacks in Nangarhar Province that took the lives of many Afghans, including children. There are significant human rights issues including disappearances, torture, arbitrary arrests, and violence against journalists. Afghanistan cooperates with the United States in a bilateral counterterrorism effort as part of Operation Freedom's Sentinel (OFS), the U.S. operation in Afghanistan. Afghanistan is a member of the Global Coalition to Defeat ISIS.

The Republic of Turkey is a constitutional republic with a multiparty parliamentary system and a president. The U.S.-Turkey friendship dates to 1831. Turkey is an important U.S. security partner and has been a valued North Atlantic Treaty Organization (NATO) ally since 1952. Turkey is a leader in the Alliance's Resolute

Support Mission in Afghanistan and is also a vital member of the Counter-ISIL Coalition. Turkey continues to face a significant terrorist threat from both external and home-grown sources. The current U.S. State Department travel warning for Turkey reflects an increased risk from terrorist groups and the potential for violence against U.S. citizens due to an increase in anti-American rhetoric. The U.S. State Department has also reported a number of significant human rights problems in Turkey, including inconsistent access to due process following the July 15, 2016 coup attempt.<sup>5</sup>

The U. S. Government states Iran is the most prominent State sponsor of terrorism in the world. The United States has no diplomatic or consular relations with Iran, and the United States warns citizens not to travel to Iran, due to the high risk of arbitrary arrests and imprisonment of U.S. citizens.

Applicant works as a linguist, embedded with a military unit. He serves as a liaison between his unit and the Afghan military. He also serves as a cultural guide when needed. Given the daily contact with his unit, Applicant has come to see the military members he supports as his family. He considers it a vital part of his job to help keep them all safe. Applicant and his family are proud citizens of the United States. He has his immediate family in the United States. He has no financial interests in Afghanistan or Turkey.

Applicant is held in high esteem by the U.S. military. The record contains six certificates of appreciation and awards for his work since 2010. A letter of recommendation touts Applicant's trustworthiness and reliability while working in a challenging and ever-changing environment. The letter also discusses the invaluable nature of Applicant's translation skills and cultural knowledge, especially with locals in challenging situations. (AE A)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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.

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<sup>5</sup> Item 13

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.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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**

### **Foreign Influence**

“[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.”<sup>6</sup> Although Turkey has historically been an ally of the United States, the recent political instability in the country and region has become a potential threat to U.S. interests operating there. Accordingly, Applicant’s relationships with his brother and sister-in-law who are refugees in Turkey create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>7</sup>

While Applicant’s interactions with his family members in Turkey and Afghanistan may be infrequent, the relationships cannot be considered casual.

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<sup>6</sup> AG ¶ 6.

<sup>7</sup> AG ¶ 7(a).

However, given the position and activities of Applicant's relatives in Turkey, it is unlikely that Applicant will be placed in a position of having to choose between the foreign interests and those of the United States.<sup>8</sup> The other relatives mentioned in the SOR are living in the United States, but some are Afghan citizens and U.S. citizens. Furthermore, these relationships do not present a conflict of interest because the ties that Applicant has developed in his current position are so deeply intertwined with his own safety and self-interest, it is likely that Applicant will resolve any potential conflict of interest in favor of U.S. interests.<sup>9</sup>

Based on the record, I have no doubts about Applicant's ability to protect and handle classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). For the past years, Applicant has been embedded with a military unit. He has supported the U.S. mission at his own peril. He has demonstrated that he takes his responsibilities very seriously, as echoed by the many character letters he received in support of his application for access to classified information. Applicant's work and conduct in his position as a linguist for the past nine years is direct evidence of his ability to operate in a sensitive environment with direct national security implications.

### **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 Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a-1.d	For Applicant

### **Conclusion**

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

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Noreen A. Lynch  
Administrative Judge

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<sup>8</sup> AG ¶ 8(a).

<sup>9</sup> AG ¶ (b).