



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



In the matter of: )  
)  
) ISCR Case No. 18-01473  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Dave Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

03/14/2019

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline B, foreign influence. He has numerous on-going contacts with citizens and/or residents of Afghanistan and/or Pakistan. Additionally, his extramarital affair with a foreign national created an unmitigated heightened risk for exploitation. He successfully mitigated the Guideline E, personal conduct security concern. National security eligibility for access to classified information is denied.

**Statement of the Case**

On August 22, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B, foreign influence, and E, personal conduct. The action was taken under Executive Order (EO) 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented June 8, 2017.

Applicant submitted an Answer to the SOR on September 18, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted its file of relevant material (FORM) on January 28, 2019. Applicant received it on February 10, 2019. The Government's evidence is identified as Items 1 through 11. 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 submitted a one-page email in response to the FORM (Response) within the time period. Items 1 through 7 are admitted into the record. The case was assigned to me on March 4, 2019.

### **Procedural Rulings**

In the FORM, the Government requested I take administrative notice of certain facts relating to Afghanistan and Pakistan. Department Counsel provided summaries of the facts, supported by Government documents pertaining to Afghanistan and Pakistan, marked as Items 8 through 11. 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.

Pursuant to Additional Procedural Guidance ¶¶ E3.1.2, E3.1.3, E3.1.7, and E3.1.13 of the Directive, Department Counsel moved in the FORM to amend the SOR issued to Applicant to conform to the evidence. Applicant raised no objections to the amendment in his Response, and I grant the motion. The SOR ¶ 1.j is amended to:

1.j. You have provided approximately \$1,000 in financial support to your father-in-law.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a through 1.g and 1.j. He denied SOR ¶¶ 1.h, 1.i, and 2.a. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 31-year-old linguist for a government contractor, with whom he has been employed since October 2017. He previously worked as a linguist in Afghanistan for another government contractor from 2011 to 2014. He was injured while in Afghanistan and recuperated in the United States from January 2012 to April 2012. He returned to Afghanistan until 2014. It is unknown whether his injury related to his job as a linguist. (Item 3; Item 4; Item 5; Item 6.)

Applicant was born in Afghanistan. He attended high school in Pakistan. He immigrated to the United States in 2008. He was naturalized as a U.S. citizen in 2017. He resides in a home owned by his father in the United States. His mother, father, and brothers are citizens and residents of the United States. His sister is a permanent resident in the United States and a citizen of Afghanistan. (Item 3; Item 4; Item 5; Item 6.)

In 2014, Applicant married his wife in Pakistan. Together, they have one child born in 2017. His wife is a 24-year-old citizen of Afghanistan and resides with Applicant in the United States. She is a homemaker. Applicant's mother-in-law is a 38-year-old citizen and resident in Afghanistan. She is a homemaker. Applicant's father-in-law is a 49-year-old citizen and resident in Afghanistan. He is self-employed in an import-export business. Applicant disclosed on his security clearance application that he sent his father-in-law \$500 twice. Applicant later corrected this statement to clarify that he sent his father-in-law two payments totaling \$500 to assist with Applicant's wife's move to the United States. Applicant has not spoken to his in-laws since his wedding. The record does not indicate the frequency at which Applicant's wife contacts her parents or if she visits them in Afghanistan. (Item 3; Item 4; Item 5; Item 6.)

Applicant's grandmother is a citizen of Afghanistan and resident in Pakistan. Applicant last had in-person contact with her in 2014. Applicant maintains monthly telephonic contact with his grandmother. (Item 3; Item 4; Item 5; Item 6.)

Applicant has two cousins who are citizens of Afghanistan, but reside in Pakistan. Neither cousin has served in the military. They are both self-employed. The SOR alleged that Applicant sent approximately \$12,000 in support to one of his cousins. That allegation was based upon Applicant's disclosure on his security clearance application that he provided his cousin \$2,000 on six occasions. Applicant denied that amount in his Answer. He recalculated the funds sent to his cousin by adding up receipts for the transactions and found that he sent a total of \$3,105 over four to five years. (Answer; Item 3; Item 4; Item 5; Item 6.) He indicated:

The reason of sending this amount is because of my spouse expenses and my own cloths, dry fruit and because of Muslim Eid occasion where we sent money to do Sacrifices of a Goat, cow [sic] from behalf of me and my family. (Answer.)

Applicant maintained contact with two childhood friends. One is a citizen of Afghanistan who resides in Pakistan. This friend is a student and supports himself by performing odd jobs. Applicant speaks to him once or twice a year by phone. The other is a citizen and resident of Pakistan. He runs a gas station. Neither friend has "military experience." Applicant last saw the second friend in 2014 at Applicant's wedding, and has one or two telephone conversations with him yearly. (Item 3; Item 4; Item 5; Item 6.)

Applicant had an extramarital relationship with an Afghan citizen residing in the United Kingdom from approximately October 30, 2017 to January 2018. They met on a social media platform. The relationship ended after the woman became engaged to marry another man. She was a student and worked part-time in an electronics store. Applicant has not had contact with her since January 2018. Applicant told "his wife he was traveling to England to visit a friend, and that is all she is required to know . . . in his culture he is not required to tell his wife any further information." He did not plan to tell his wife about his extramarital relationship. Applicant did not feel the information could be used to

blackmail him because he knows his wife “would never believe he would ever be unfaithful.” (Answer.)

Applicant failed to list the woman with whom he had the extramarital affair with on his November 17, 2017 security clearance application under foreign contacts. However, he denied that the omission was intentional. (Item 3; Item 4; Item 5; Item 6.) He explained:

I have mention[ed] [name omitted] during my CI interview with full detail and the reason [I] first missed it to put it in (e-QIP) Maybe because [I] didn't double check my all detail and was unable to put everything's which [I] should have, it [was] also possible because when there is too much paper work there is always a chance a person missed some of the information to put because naturally a person want to finish things in a hurry. (Answer.)

Applicant provided a copy of his itinerary showing that he flew to London in October 2, 2017, and returned early November 2017. His child was born the day after his return to the United States. He disclosed this travel on his security clearance application and listed the purpose of his trip as “tourism.” He disclosed his extramarital affair with the resident of the United Kingdom at his November 20, 2017 counterintelligence screening. (Item 6.) The next day, November 21, 2017, he signed his security clearance application. (Item 4.) Despite disclosing the extramarital relationship to the Government, his wife does not know of the affair.

## **Afghanistan**

The U.S. Department of State has issued a travel warning for Afghanistan, due to crime, terrorism, civil unrest, and armed conflict. It notes that travel to all areas of Afghanistan is unsafe due to the ongoing risk of kidnapping, hostage taking, military combat operations, suicide bombings, and insurgent attacks. Attacks may target official Afghan and U.S. governmental convoys and compounds. Extremists associated with Taliban networks and the Islamic State are active throughout Afghanistan. Widespread human rights abuses are reported. (Item 9.)

## **Pakistan**

The U.S. Department of State has issued a travel warning for Pakistan due to terrorist threats. Terrorists in Pakistan attack with little or no warning and target public places like shopping malls, airports, universities, military installations, and tourist locations. Further, human rights abuses including extrajudicial and targeted killings, disappearances, torture, lack of rule of law, and vigilante justice exist in Pakistan. (Item 10.)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline,

the AG list potentially disqualifying conditions and mitigating conditions, which are 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, 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. According to AG ¶ 2(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 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 that an applicant may deliberately or inadvertently fail to 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.

Finally, 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**

### **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. Four 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;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant has close connections to his wife, who is a citizen of Afghanistan, residing with Applicant in the United States. Her parents are citizens of and residents in Afghanistan. Applicant's grandmother, with whom he has monthly contact, is a citizen of Afghanistan residing in Pakistan. His cousins and friends are residents of Pakistan. Further, there is an articulated heightened risk associated with having ties to family members and friends in Afghanistan and Pakistan, due to the activities of terrorist organizations and human rights abuses within their borders. There is also a heightened risk associated with having an extramarital affair with a foreign national. His extramarital relationship with an Afghan citizen residing in the United Kingdom may make him vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country. 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;

(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.

Applicant failed to meet his burden to present sufficient evidence to establish any of the above mitigating conditions. Applicant is in contact with his family and friends in both Afghanistan and Pakistan. He provided some financial support to his family in Pakistan. Due to Applicant's relationship with his family, and the terrorist threats and human rights abuses in Afghanistan and Pakistan, I cannot find it is unlikely he would be placed in a position of choosing between them and the interests of the United States. Further, his wife is not aware of his extramarital affair. He could be subject to coercion as a result. He failed to demonstrate deep and longstanding loyalties to the United States that would demonstrate he would resolve any conflict of interest in favor of the U.S. interest. While he is credited for his years of service to the United States as a linguist, the record contains little information on assets, or physical or emotional bonds to the United States, aside from the presence of his immediate family, parents and siblings in the United States. Without more information, it cannot be determined that Applicant would resolve any conflict of interest in favor of the U.S. interest.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 information or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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.

Applicant failed to identify a foreign contact when he omitted his girlfriend on his November 2017 security clearance application, even though he had visited her in England just 19 days prior to completing the form. However, that omission was not intentional, as he had reported his extramarital relationship to the Government during his counterintelligence screening the day prior to submitting his security clearance application. He also reported his travel to the United Kingdom. AG ¶ 16(a) is not applicable.<sup>1</sup>

## **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;

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<sup>1</sup> The SOR did not allege Applicant's extramarital affair was disqualifying because it was conduct that created a vulnerability to exploitation under Guideline E. As a result, it is not proper to consider his extramarital affair as disqualifying outside of the falsification allegation under Guideline E. However, it is appropriate for examination under the whole-person concept.



(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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept. Applicant served honorably as a linguist. However, the record lacks information to support a finding that he would resolve any conflict of interest in favor of the United States. He has placed himself in a position that could easily lend itself to coercion by participating in an extramarital affair with a foreign national, and concealing that relationship from his then pregnant wife. His indiscretion was recent, and he has provided no evidence of rehabilitation. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for foreign influence.

### **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.j	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a	For Applicant

### **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 access to classified information. National security eligibility is denied.

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Jennifer I. Goldstein  
Administrative Judge