



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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XXXXXXXXXXXXXXXXXXXXXXXXXXXX ) ISCR Case No. 19-00095  
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Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Esquire, Department Counsel  
For Applicant: *Pro Se*

09/26/2019

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case [Transcript (Tr.), Government exhibits (GE) 1-2, and hearing exhibits (HE) I-II], I grant Applicant's clearance.

On 19 February 2019, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence.<sup>1</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 7 April 2019, and I convened a hearing 6 June 2019. DOHA received the transcript 17 June 2019, and the record closed.

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<sup>1</sup>DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, effective on 8 June 2017.

## Findings of Fact

Applicant admitted the allegations of the SOR. He is a 73-year-old linguist employed by a defense contractor since July 2017. He was previously employed by this same company from August 2011 to September 2013, when he had to take extended medical leave because of a heart attack. He has not previously held a clearance, but underwent counter-intelligence screenings in approximately August 2011 and August 2017 (GE 2). During his first tenure with the company, he traveled to Afghanistan on U.S. Government business from August 2011 to May 2012, May 2012 to May 2013, and May to October 2013.

Applicant was born in Afghanistan in March 1946. He grew up there and was educated there until September 1965, when he went to another university to undertake a master's degree, which he obtained in February 1972. He returned to the same university in September 1974 to undertake a doctoral degree, which he obtained in March 1979. From 1972 through 2000 and again from 2002 to 2005 he worked in the Afghan Ministry of Education (SOR 1.c). Most of his time with the ministry was spent as a professor at a Kabul university. Applicant and his family fled to Pakistan in 2000, when the Taliban took over Afghanistan. They returned, at the invitation of the new Afghan government, After the U.S. invasion to overthrow the Taliban after 9//11.

Applicant and his wife—a dual citizen of Afghanistan and the U.S. residing with Applicant—married in Afghanistan in November 1979. They have two children born in Afghanistan: a son born in 1980 and a daughter born in 1988. Both are naturalized U.S. citizens residing in the U.S. Applicant's parents are both deceased, as are his older and younger brothers, and his in-laws. Applicant has a 20-month old grandson, born in the U.S.

Applicant's spouse worked in the Afghan diplomatic corps. From 2002 to 2005, she served in the Afghan Ministry of Foreign Affairs. Then, she was posted as the Afghan Ambassador to another country from 2005 to 2008 (SOR 1.a) During that time, Applicant was unemployed. He volunteered to provide technical support to his wife's office whenever there was an issue with their computer systems (SOR 1.c).

Rather than return to Afghanistan after his wife's term as ambassador to another country ended in March 2008, Applicant and his wife immigrated to the U.S., on their Afghani diplomatic passports, without the knowledge or permission of the Afghan government.. In April 2008, they applied for political asylum because of the political and military situation in Afghanistan. Asylum was granted. As required by U.S. and international law, they maintained their Afghan passports—no longer diplomatic. Applicant applied for U.S. citizenship in June 2014, and became a naturalized citizen in December 2014 (GE 2). His U.S. passport was issued in January 2015, and expires in January 2025 (GE 1). All his Afghan passports have expired, the most recent one in June 2016, having been issued in June 2011.

Sometime between 2015 and 2017, Applicant was contacted by a named individual who was then the Afghan Minister to the U.S. Applicant has been inexact at best about when that contact actually occurred. Applicant's issue is that the named individual who Applicant insists made the contact was Ambassador to the U.S. from February 2011 to February 2015 (independently verified), and the named Ambassador that appears in Applicant's August 2017 counter-intelligence investigation was Ambassador from September 2015 to August 2018 (independently verified) (GE 2). Applicant asserts that he does not know the second Ambassador, and that the first Ambassador reached out because he had been Applicant's student while in college. His wife had also been friend's in Afghanistan with the Ambassador's family. Applicant and his wife met with the first Ambassador at the Afghan embassy to have tea and congratulate him on his appointment (SOR 1.d). Readily available information confirms that the first Ambassador is closer in age to Applicant and also graduated from the same university in Kabul where Applicant taught, while the second Ambassador is much younger than Applicant, and his educational history in Afghanistan is unknown. I conclude that Applicant was referring to the first Ambassador when he discussed his and his wife's contact with the current Ambassador to the U.S. In any event, Applicant had no further contact with this Ambassador; although Applicant later correctly learned that this Ambassador later became the Afghan Ministry of Finance before stepping down in 2018 (independently verified).

Applicant and his wife have no financial interests in Afghanistan. Applicant has no contacts in Afghanistan that are not part of his official U.S. Government business. When he travels to Afghanistan he never leaves the U.S. base where he is posted, and his job is to interview prisoners brought in for questioning. Applicant's wife has no continuing contacts in Afghanistan. She traveled to Afghanistan to visit some distant relatives on her father's side in 2015.

## **Afghanistan**

The United States Department of State's travel warning for Afghanistan remains in effect and it warns U.S. citizens against travel there because of continued instability and threats by terrorist organizations against U.S. citizens. Travel there is unsafe due to ongoing risk of kidnapping, hostage-taking, military combat operations, and armed rivalry between political and tribal groups, militant attacks, suicide bombings, and insurgent attacks. These attacks may also target Afghan and U.S. Government convoys and compounds, foreign embassies, military installations, and other public areas.

As recently as December 2018, the U.S. Embassy in Kabul warned U.S. citizens in Afghanistan of reports that militants plan to conduct attacks against hotels, compounds, international organizations, universities, airports and other locations frequented by U.S. citizens and other foreign nationals.

Extremists associated with various Taliban networks, the Islamic State in Iraq and Syria (ISIS), and members of other armed opposition groups are active throughout the

country. These terrorist groups routinely attack Afghan, coalition forces, and U.S. targets with little regard for or the express intent to cause civilian casualties. Due to security concerns, unofficial travel to Afghanistan by U.S. Government employees and their family members is restricted and requires prior approval from the State Department

Afghanistan continues to experience aggressive and coordinated attacks by different terrorist groups. These groups remain active and were able to conduct a number of high-profile, mass-casualty attacks in Kabul against sectarian and Afghan government targets. They continue to plan such attacks against U.S. and coalition forces and Afghan interests. Border regions of Afghanistan and Pakistan remain safe havens for terrorists. The Afghan government struggles to assert control over this remote region.

According to a June 2017 U.S. Department of Defense report on Afghanistan, Afghanistan faces a continuing threat from as many as 20 insurgent and terrorist networks present and operating in the Afghanistan-Pakistan region, in what is the highest concentration of extremist and terrorist groups in the world.

The State Department's report on human rights for Afghanistan notes there was widespread violence, including indiscriminate attacks on civilians and killings of persons affiliated with the government by armed insurgent groups, widespread disregard for the rule of law, and little accountability for those who committed human rights abuses. There was also targeted violence and endemic societal discrimination against women and girls.

Afghanistan remains an important partner of the United States in the fight against terrorism, working with the U.S. to eliminate terrorist groups. The U.S. Government continues to invest resources to help Afghanistan improve its security, governance, institutions, and economy. The U.S. Government has a strong bilateral partnership with the Afghan government.

## **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case.

Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government. See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

### **Analysis**

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism (AG ¶ 6).

Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion [AG ¶ 7(a)]. In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation [AG ¶ 7(e)].

In this case, the Government failed to establish a case for disqualification under Guideline B. Considering first the country involved, on balance Afghanistan and the U.S. enjoy good foreign relations. It has not been demonstrated that the Afghan government is actively engaged in the collection of U.S. intelligence which would make Applicant or his family likely targets for coercion, duress, or influence. The Government's evidence explains the links to terrorism that are ongoing in Afghanistan and the way that those terrorist organizations operate, the increase in terrorism, and the increase in membership in terrorist groups. Several of the groups that are frequently in the news, for example the Taliban and Al Qa'ida, operate in Afghanistan and practice terrorist acts against Afghan and U.S. forces as well as indiscriminate violence in order to draw attention to themselves and increase their membership and their power. There is no indication they use terrorism

to gain access to U.S. information. Moreover, there is nothing in Afghanistan that could be used as a point of leverage on Applicant, whether the Afghan government or terrorists.

Considering Applicant's circumstances, the Government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's contacts in Afghanistan, because there are none. Consider SOR 1.d: Sometime between 2015 and 2017, Applicant and his wife met once with a former student of Applicant and a family connection of his wife, to have tea while congratulating the former student and family connection on his appointment as Ambassador to the U.S. They have had no contact with him since. Consider SOR 1.b: Applicant helped around his wife's office as a volunteer from 2005 to 2008, and the two of them came to the U.S. rather than return to Afghanistan, ending their joint connection to Afghanistan. Alleged this way, it is almost laughable. No U.S. policy requires Applicant to disassociate himself from his wife, even if she was an Afghan Ambassador. If anything, Applicant and his wife would appear to be good potential intelligence sources for U.S. interests. Moreover, Applicant experienced no difficulty renewing his Afghan passport in June 2011, as required of all legal permanent residents of the U.S. His wife apparently experienced no difficulty, as she has actually returned to Afghanistan

Similarly, there are no connections that might raise any potential conflict of interest. He owes no obligation to any Afghan person or entity. Further, he has been in the U.S. more than 10 years. His wife and children are here, as is his young grandchild. All his financial interests are here. Consider: Applicant and his family were vetted before they were granted asylum in 2008. Except for the visit with the former student, all the SOR allegations were at issue in this vetting. Again, all these issues were vetted in 2011, when his favorable counter-intelligence screening allowed him to travel for his current employer multiple times to Afghanistan to perform Government-contract work. Finally, Applicant has served with U.S. forces in Afghanistan, producing the classified intelligence for those forces and protecting U.S. interests, even without a clearance.<sup>2</sup> Essentially, he is the source of the information to be protected. There is no interest in Afghanistan for Applicant to choose between over those of the U.S. [AG ¶ 8(a)]. None of the other disqualifying conditions are implicated by the facts in this case. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his—or his wife's—past involvement in Afghanistan. Accordingly, I resolve Guideline B for Applicant.

### **Formal Findings**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a-d:

For Applicant

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<sup>2</sup>A factor the Appeal Board has regularly acknowledged as a legitimate factor for consideration in Guideline B cases. See, ISCR Case No. 07-00034 (5 February 2008); ISCR Case No. 04-02511 (20 March 2007).

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge