



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



In the matter of: )  
)  
) ISCR Case No. 19-00574  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Liam Apostol, Esq., Department Counsel  
For Applicant: *Pro se*

**09/10/2019**

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant mitigated the foreign influence security concerns arising from her husband’s connections to two family members residing in Afghanistan. National security eligibility for access to classified information is granted.

**History of Case**

On June 10, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 2, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). On April 26, 2019, Applicant answered the SOR in writing and requested a hearing (Answer). The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 27, 2019. DOHA issued a Notice of Hearing on July 30, 2019, setting the hearing for August 16, 2019. At the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence. Applicant testified and offered Applicant Exhibit (AE) A. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on August 26, 2019.

## **Procedural Ruling**

Department Counsel submitted Hearing Exhibit (HE) 3, a written request that I take administrative notice of certain facts about Afghanistan. Applicant did not object to the request, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications attached to the request. (Tr. 14) The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute. The pertinent facts are set out in the Findings of Fact below.

## **Findings of Fact**

Applicant admitted the two allegations contained in the SOR. Her admissions are incorporated into these findings.

Applicant is 32 years old and was born in United States. She earned a bachelor's degree from an American university. She married her husband in 2009. He was born in the United States. They have three young children. She has worked for a defense contractor since 2014. Prior to that, she stayed at home with her children for three to four years. Applicant is active in community and school organizations. (Tr. 16-18, 21, 27-28; AE A)

Applicant's parents were born in Afghanistan. Her father immigrated to the United States in 1969 and her mother in the early 1980s. They are naturalized U.S. citizens. They met in Afghanistan and married in the United States. Applicant has a sister and a half-sister, both of whom were born in the United States. Her parents do not have any immediate family members who are citizens and residents of Afghanistan. All of them live in the United States. Applicant's mother has occasional contact with a distant relative in Afghanistan. Her parents do not receive any money from people living in Afghanistan. Applicant does not have contact with any family members in Afghanistan. She does not send money to anyone residing there, nor does her husband. They do not receive money from people residing in Afghanistan. (Tr. 19, 23, 29, 32, 35-36)

Applicant's believes that her father returned to Afghanistan once after immigrating to the United States. She was a young child at the time. Her mother returned once when Applicant was in high school. Both parents know she is seeking a security clearance. (Tr. 33)

Applicant's mother-in-law and father-in-law were born in Afghanistan. They subsequently immigrated to the United States. After her father-in-law divorced her mother-in-law, he returned to Afghanistan in 1988 when Applicant's husband was five years old. Applicant remained with his mother in the United States. Applicant said she has never met her father-in-law, but spoke to him once after she and her husband were married in the United States. She testified that her husband speaks to his father at most, once a year. She said he played little or no role in her husband's upbringing and life. Her mother-in-law is a U.S. citizen and resident. She worked as a linguist for the U.S. Armed

Forces in Afghanistan for a couple years. She is aware that Applicant is seeking a security clearance. (Tr. 24-25, 32-34, 36-37; GE 1, GE 2)

Applicant's father-in-law served as a minister in a department of the Afghan government. Applicant said she did not know that information about her father-in-law until she received the SOR. She does not think he currently works in any capacity related to the Afghan government or its military. (Tr. 25-26: GE 2)

Applicant's husband's second cousin was a high-ranking member of the executive branch of the Afghan government from 2004 to 2014. She has never met this cousin and has no contact with him. Her husband does not have contact with him or any cousins in Afghanistan. He has contact with cousins residing in the United States. (Tr. 34, 38)

Applicant has never visited Afghanistan. (Tr. 21) Her husband worked for a defense contractor in Afghanistan as an interpreter for the U.S. Armed Forces for a year between 2005 and 2006, which was prior to their marriage in 2009. At the time he worked there, his father was a minister in the Afghan government and his second cousin was in the executive branch. She believes her husband held a security clearance at that time. Her husband returned to Afghanistan once to visit family years ago. (Tr. 21-22, 31-32; GE 1, GE 2)

Applicant and her husband purchased a \$237,000 home in 2015, and have a \$150,000 mortgage on the property. They have bank and retirement accounts in the United States. They have no property or financial interests in Afghanistan. (Tr. 18-19, 30)

Applicant submitted letters of recommendation from her manager and immediate family members. Her manager stated he has supervised Applicant since April 2014 and has no knowledge that she maintains relationships or contacts with citizens or residents of Afghanistan. Applicant's mother and half-sister confirm that Applicant has never met her husband's second cousin and has no contact with him or her father-in-law. All authors attest to her loyalty to the United States. (AE A) Throughout the hearing, Applicant asserted a strong commitment to the United States and its interests. (Tr. 45)

## **Afghanistan**

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Afghanistan. Specifically, Afghanistan faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups are increasingly active throughout Afghanistan. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all travel to Afghanistan should be avoided. Of particular significance are the poor human rights situation; the active and hostile presence of Al Qaida, the Taliban, the Haqqani Network; and other insurgent and extremist groups that generate instability and openly attack police, security and military forces, the local populace, and U.S. persons and interests. (HE 3)

## Policies

This national security eligibility action was taken 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 the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD after June 8, 2017.

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

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 applying for national security eligibility seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 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 describes conditions that could raise security concerns and may be disqualifying under AG ¶ 7. Two 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; and
- (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that 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. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Afghanistan has internal factions that are openly hostile toward the United States and engage in extensive anti-western terrorism activities, contrary to U.S. interests. Accordingly, Applicant's connections to her husband's family in Afghanistan generate significant heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

Applicant's husband has a relationship with his father, who is a citizen resident of Afghanistan and a former government official. His second cousin is a former government executive. These two relationships create a heightened risk of foreign pressure or exploitation, and a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and her desire to help her husband's relatives residing in Afghanistan. The evidence is sufficient to raise disqualifying security concerns under AG ¶ 7(b).

After the Government produced sufficient evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(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.

Applicant demonstrated that it is unlikely she could be placed in a position of having to choose between the interests of an Afghan individual or government and those of the United States as a consequence of her husband's family ties there. She has never met her father-in-law and has spoken to him once by telephone in 2009, when she and her husband were married. Her husband speaks to his father no more than once a year and never speaks to his second cousin. She has never met or spoken to her husband's second cousin. The potential for a conflict of interest situation created by these family connections is sufficiently mitigated. Accordingly, she established the mitigating conditions set out in AG ¶¶ 8(a) and (c).

The evidence establishes full mitigation under AG ¶ 8(b). A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has strong connections to the United States. She was born here. Her immediate family members, including her husband, children, parents, and siblings are citizen residents of the United States. She graduated from U.S. schools and is active in many community organizations. All of her and her husband's financial and real property assets are in the United States. Additionally, her husband and mother-in-law assisted the U.S. Armed Forces in Afghanistan during the most recent war there. All of these facts are in Applicant's favor and outweigh any familial connections she has in Afghanistan through her spouse. Applicant's U.S. ties are deep and longstanding such that she can be expected to resolve any conflict of interests related to her husband's father or second cousin in Afghanistan, in favor of the U.S. interests.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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

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

The foreign influence security concerns do not arise from any questionable conduct by Applicant, but rather from circumstances that are normal results of family situations. There is no evidence that she has ever taken any action that could cause potential harm to the United States, or that her husband's father or second cousin poses a potential risk to the United States. There is credible evidence that her husband and mother-in-law are loyal U.S. citizens and residents, as demonstrated by their work as linguists for the United States during the recent war there. After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the

whole-person, Applicant fully mitigated the substantial security concerns pertaining to foreign influence.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **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: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

### **Conclusion**

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

SHARI DAM  
Administrative Judge