



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-00841  
)  
Applicant for Security Clearance )

**Appearances**

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

08/06/2019

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

**Statement of the Case**

On April 5, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. 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 the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 21, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) and it was received by Applicant on June 26, 2019. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 4. Applicant provided a response to the FORM with an additional document that is marked Applicant Exhibit (AE) A. There was no objection to any of the evidence, and Items 1 through 4 and AE A are admitted. The case was assigned to me on July 29, 2019.

### **Request for Administrative Notice**

In the FORM Department Counsel requested that I take administrative notice of certain facts about Afghanistan (Item 5). Applicant did not object, 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 and those that were provided with the FORM. The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.b through 1.e and 1.g. He denied the SOR allegations in ¶¶ 1.a, 1.f, 1.h and 1.i. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He was born in Afghanistan. He is a high school graduate and earned two vocational certificates. He was granted a special immigration visa in 2009 for his work with the United States Forces in Afghanistan. He immigrated to the United States in 2009 and became a naturalized citizen in June 2014. Applicant married in 2004. He has three children, ages 12, 10, and 4 years old. His wife is a citizen of Afghanistan and a permanent resident of the United States. Applicant stated that his wife intends to apply for U.S. citizenship. His two eldest sons became naturalized citizens of the United States in 2014, and his youngest child was born in the United States and is a citizen. Applicant indicated in his answer to the SOR that his wife and children reside in the United States and have no intention of returning to Afghanistan in the foreseeable future. (Items 1, 2; AE A)

Applicant disclosed in his answer to the SOR that he previously worked as a linguist in Afghanistan for the U.S. Government and military from 2003 to 2009. It was this service that made him eligible for a special immigration visa. After he immigrated, he returned to Afghanistan and worked from 2010 to 2013 for the U.S. military as a linguist. Applicant disclosed in his security clearance application (SCA) that he has been working in Afghanistan as a linguist for a federal contractor since January 2015 to the present. (Items 1, 2; AE A)

Applicant's mother, father, three brothers, three sisters, and two brothers-in-law are citizens and residents of Afghanistan. He stated that in 2016, he applied for an immigration visa to the United States for his mother, but because a request for information was sent to his U.S. address and he was serving in Afghanistan, he never received it, and the visa was denied. His mother remains in Afghanistan. She is a housewife. His father is a retired laborer/farmer. In the past, Applicant provided his parents some

financial support. At that time, his mother had cancer, and has since recovered. He no longer provides his parents financial support, but does give them gifts for special occasions and holidays. His parents are now financially supported by Applicant's brothers. (Item 1; AE A)

One of Applicant's brothers is a dentist, another owns a cell phone store, and the youngest is a university student. At one time, Applicant provided his brothers financial support. He no longer provides support. He does send monetary gifts for special occasions and holidays. (Item 1; AE A)

Applicant's three sisters are married and housewives. He does not provide them financial support and he does not have regular contact with them since they married. (Item 1; AE A)

Applicant's said that he does not have regular contact with one brother-in-law and does not provide him any financial support. The other brother-in-law, who previously worked for the National Directorate of Intelligence, is now retired. Applicant indicated his brother-in-law was a clerk. He stated that he has contact with him once or twice a year and has not seen him in person for years. (Item 1; AE A)

Applicant stated that he has not had in-person contact with any family member in Afghanistan since 2013. In his February 2018 background interview, he stated that he maintains contact with his parents. He also has regular contact with his oldest brother through Facebook and telephonically. He has contact once or twice a month with his other brothers. He has not disclosed to his family in Afghanistan what he does or for whom he works. None of his relatives are affiliated with the Afghan government. (Item 3; AE A)

Applicant does not have any financial interests in Afghanistan. He owns two houses in the United States. He lives in one and rents the other. Applicant indicated to the government investigator that he follows all appropriate security procedures and those related to contact with foreign nationals. He has not been threatened, put under duress, or blackmailed because of his family in Afghanistan. There have been no threats to induce Applicant to cooperate with foreign entities. His family is unaware that he is undergoing consideration for obtaining a security clearance with the U.S. Government. He believes they would be supportive if they knew. He stated: "all of my adult life I have been working for the U.S. and I will continue to work with honesty and integrity for the U.S. Government." (Items 1, 3; AE A)

## **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.

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.

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**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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.

Section 7 of EO 10865 provides that 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**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (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; and
- (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.

There is a significant threat of terrorism and ongoing human rights problems in Afghanistan. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members living in Afghanistan. The above disqualifying conditions have been raised by the evidence.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating condition under AG ¶ 8 is potentially applicable to the disqualifying security concerns based on the facts:

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

I considered the totality of Applicant's ties to Afghanistan. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who worked for the United States Government and military from 2003 to 2009. Because of his dedicated service he was granted a special

immigration visa and immigrated to the United States in 2009. From 2010 through 2013, he worked to Afghanistan in support of the U.S. Government and military. In 2014, he became a naturalized citizen and from 2015 to the present, he has served in Afghanistan as a linguist. Applicant did not provide any specific evidence that he served under dangerous conditions, but it is likely that in his position as a linguist, the lengthy periods he served, and the generally dangerous environment of Afghanistan that his service had elements of danger in support of the national defense. He stated that: "all of my adult life I have been working for the U.S. and I will continue to work with honesty and integrity for the U.S. Government." Based on his long history of service, I find his statement credible. Applicant's immediate family of his wife and three children live in the United States. His three children are U.S. citizens and his wife is a permanent resident. Applicant owns two houses in the United States. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

### **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):

- (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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

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

Applicant's work with the U.S. Government and military from 2003 to 2009 in Afghanistan earned him a special immigrant visa. He returned to Afghanistan as a linguist from 2010 to 2013. He became a naturalized citizen in 2014 and returned as a linguist to Afghanistan in 2015 where he continues to work to the present. He has spent approximately 13 years and most of his adult life working for the United States Government and military. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable

result for an applicant in a Guideline B case.” ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). The complicated state of affairs in Afghanistan places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

**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: FOR APPLICANT

Subparagraphs 1.a-1.i: For Applicant

**Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge