



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03043
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro se*

February 10, 2021

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On October 1, 2018, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). On January 3, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence and Guideline F, Foreign Influence. The 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 adjudicative guidelines (AG) dated June 8, 2017.

Applicant answered the SOR on February 3, 2020, and requested a hearing before an administrative judge. The case was assigned to me on March 11, 2020. The Defense Office of Hearings and Appeals issued a notice of hearing on September 29, 2020, and the hearing was convened as scheduled on November 13, 2020. The Government offered eleven exhibits, referred to as Government Exhibits 1 through 11,

which were admitted without objection. The Applicant offered seven exhibits at the hearing, referred to as Applicant's Exhibits A through G, which were admitted without objection. Applicant testified on his own behalf. The record was left open until close of business on January 27, 2021, to allow Applicant to submit additional supporting documentation. Applicant submitted no additional documentation. DOHA received the transcript of the hearing (Tr.) on November 23, 2020.

### **Request for Administrative Notice**

The Government requested I take administrative notice of certain facts relating to the country of Afghanistan. Department Counsel provided a seven page summary of the facts, supported by eight Government documents pertaining to Afghanistan. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. (HE-I) They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant is 36 years old and is married with children. He has an Associate degree in Criminal Justice. He is employed with a defense contractor as a linguist. He is seeking to retain a security clearance in connection with his employment.

### **Guideline B – Foreign Influence**

Applicant was born in Kabul, Afghanistan. At the age of six, he moved to Pakistan where he lived for about ten years. He then moved to the United States in 2001, where he lived with his brother and grandfather. He went to college and obtained a degree. In 2011, Applicant became a naturalized U.S. citizen. He married in 2005. His wife is a naturalized U.S. citizen. They have three native-born American children.

Applicant began working for the Defense Department, and served two successful tours as a linguist alongside U.S. forces in combat zones in 2011 and 2013. He was also deployed overseas for a period in 2019. He has outstanding references from his previous mission assignment demonstrating outstanding competence on all levels. Applicant was hired by his current employer in April 2019, and is currently applying for an upgraded linguist position, requiring a security clearance.

In 2011, Applicant's mother, father and sister all resided in and were citizens of Afghanistan. Applicant denies these allegations in response to the SOR under this guideline, as situations have changed. Applicant's parents are now both naturalized U.S. citizens, and they live in the United States. Applicant's mother became a naturalized U.S. citizen in March 2019. Applicant provided a copy of her valid U.S. passport. (Applicant's Exhibit A.) Since December 2019, Applicant's father is also a naturalized U.S. citizen. Prior to moving to the United States, Applicant's father was employed as a Police Officer in Afghanistan. He is now retired. Applicant provided a

copy of his father's certificate of U.S. naturalization. (Applicant's Exhibit A.) Applicant's sister, who at one time was a resident and citizen of Afghanistan, is now a citizen of the Netherlands, where she currently resides. Applicant provided a copy of her Netherlands passport. (Applicant's Exhibit A.)

During his security clearance background investigation, Applicant was asked if he will inherit any property in Afghanistan. (Government Exhibit 5.) Applicant testified that he no longer stands to inherit property owned by his father or anyone else in Afghanistan. His father is currently in good health. Applicant further testified that the value of any property owned by his father in Afghanistan is insignificant compared to what Applicant owns in the United States. Applicant states that he will not lay claim to any property in any foreign country. Furthermore, Applicant has no interest in ever moving back to Afghanistan to live or retire. (Tr. p. 47.)

### **Guideline F – Financial Considerations**

Applicant is indebted to ten creditors listed in the SOR, totaling approximately \$100,000. He admits each of the allegations set forth in the SOR under this guideline, except allegations 1.a, and 1.j. His financial distress began in about November or December 2015. At that time he was not earning sufficient monies to pay his bills. His wife owned a rental property in a location that encountered a gas leak and ultimately caused the tenants to move. Applicant's wife was pregnant with their second child. Applicant had just started renovating their primary residence. The snowball effect of this situation caused many of his financial troubles. Credit reports of the Applicant dated October 13, 2018; August 21, 2019; March 10, 2020; and November 11, 2020, confirm this indebtedness. (Government Exhibits 7, 8, 9, and 11.)

The following debts became delinquent and are of security significance: 2.a. A mortgage account was past due in the amount of \$34,683 with a total balance of \$325,940. 2.b. A debt owed to a creditor in the amount of \$36,244 was also delinquent. 2.c. A debt owed to a creditor was charged off in the amount of \$18,810. 2.d. A debt owed to a creditor was charged off in the amount of \$16,553. 2.e. A debt owed to a creditor was placed for collection in the amount of \$14,375. Applicant believes the debt has been settled but provides no documentary evidence to support this assertion. (Tr. p. 61.) 2.f. A debt owed to a creditor was placed for collection in the amount of \$9,967. 2.g. A debt was owed to a creditor was charged off in the amount of \$3,181. 2.h. A debt owed to a creditor was charged off in the amount of \$2,132. 2.i. A debt owed to a creditor was charged off in the amount of \$1,087. 2.j. A judgment was entered against the Applicant in 2018 in the amount of \$3,168. This debt has been paid in full. (Applicant's Exhibit C, and Government Exhibits 7, 8, 9, 10, and 11.)

Applicant explained that his mortgage fell in arrears, and a number of credit cards became delinquent. Since then, Applicant has brought his mortgage to a current status, and he is steadily reducing his HOA indebtedness. (Applicant's Exhibit B.) In January 2017, to avoid foreclosure, Applicant hired a credit repair company to assist him in resolving his delinquent debt. (Applicant's Exhibit B.) At that time, they set up a financial plan that illuminated non-necessary expenditures and focused on his most

important debts first. Applicant started the plan, and he believes that he made significant headway, but was unable to complete it due to another unexpected financial hit.

Since April 2019, Applicant has been gainfully employed. (Applicant's Exhibit F.) He states that he has tried to resolve his delinquent debt, but has encountered difficulties. To avoid bankruptcy, in November 2019, Applicant hired another debt management company. (Applicant's Exhibit D.) He states that this company has been helpful. He believes that they are negotiating with the creditors to reduce the amount of the debts owed. (Tr. p. 59.) He also stated that they have been placed him on a payment plan to avoid Bankruptcy. (Applicant's Response to SOR.) However, due to the pandemic, from March through July 2020, as Applicant has been on leave from work, awaiting his security clearance hearing, he has not had the money to pay his past-due debts. He states that he received a salary from his employer until July 2020. Given the circumstances, Applicant has been unable to resolve his debts.

Applicant states that he intends to resolve each of the delinquent debts listed in the SOR. Applicant contends that some of the debts listed in the SOR are no longer owing, as they are old debts, and were incurred before he worked for the Defense Department, and are no longer showing delinquent on his credit report. (Applicant's Exhibit G.) Other debts listed in the SOR are still owing, and he plans to pay them when he has the money to do so.

Letters of recommendation from military and professional associates of the Applicant indicate that he is considered to be an outstanding linguist. He has consistently demonstrated "exceptional linguist skills and cultural expertise, as well as loyalty and dedication to the U.S. and their missions in his position, both on and off duty." Applicant's linguist capabilities and cultural expertise have allowed military missions to achieve great headway with Afghan partners. Moreover, Applicant is said to have been resilient despite the tragedies of war he has experienced. He is highly recommended for a security clearance. (Applicant's Exhibit E.)

I have taken administrative notice of the following information concerning the country of Afghanistan, which include the Government's briefs and supportive documents on the country of Afghanistan. In 2001, the United States led a coalition to remove the Taliban from power in Afghanistan. Afghanistan remains an important partner with the United States in the fight against terrorism, and has been designated a Major Non-NATO Ally. However, numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Afghans. Even with aggressive governmental action against terrorists, the threat of terrorism in Afghanistan remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services. In summary, Afghanistan provides a significant and heightened security risk to the United States.

## 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 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 AG ¶ 2 describing 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.

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 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information 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 access to classified information. 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 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

### 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. 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.

Applicant's foreign family relatives include his mother and father, who were at one time residents and citizens of Afghanistan. Applicant's sister was also a citizen and resident of Afghanistan. At that time, Applicant's foreign connections could have posed a security risk.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 and two of them are applicable in this case.

- (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's parents are now U.S. citizens and they reside in the United States. His sister is now a citizen and resident of the Netherlands. Applicant's ties to Afghanistan are now based solely upon where he was born and the unique skills and cultural knowledge he brings to the United States. His parents have now made the United States their permanent home. Under the circumstances, Applicant's foreign contacts do not pose a heightened security risk for the United States Government.

In this case, Applicant's foreign relatives, namely his parents, are U.S. Citizens and reside here. His sister is a citizen and resident of the Netherlands. His parents are not affiliated in any way with the Afghan government. Furthermore, other than those contacts that have been established through his work as a linguist, Applicant has no family members or friends or associates of any kind in Afghanistan. Applicant has shown that he can be trusted. His past record of performance demonstrates that he has already served in combat zones with our military missions and has done an exemplary job.

It is recognized that Applicant is at a higher risk of being targeted by Afghan extremists in an effort to gather American intelligence. However, except for his sister in the Netherlands, Applicant's family ties are here in the United States, and his loyalty and dedication is solid. Applicant is a naturalized American citizen. He has accomplished his educational goals, has excelled at work, and has shown full allegiance to the United States. He has made many sacrifices by choosing to work in his position as a linguist in a war zone, which has proven to be very dangerous. In the past, Applicant has fulfilled his duties and responsibilities to protect the United States, our Armed Forces, and our mission. Thus, it can be assumed that he will continue to place the interest of the U.S. paramount, and always protect the national interests of the U.S. He states that he will never do anything that could place the interests of the U.S. in jeopardy. Under the circumstances, Applicant has met this burden and has established the two mitigating conditions set forth above under Guideline B.

#### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial delinquencies. It is not clear from the record whether he has lived beyond his means, or whether he simply has not earned enough money to support himself and his family modestly. Most of the debts listed in the SOR remain owing. There is insufficient evidence in the record to conclude that he is financially stable, or that he can afford his lifestyle, or that he has financial resources available to pay his past-due financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Circumstances beyond the Applicant's control, namely loss of employment, contributed to his financial problems. He incurred excessive debt that he has not been able to pay. Today, he remains excessively indebted. Although Applicant appears to have made some attempts to pay his debts, he has shown no significant progress. Other than bringing his mortgage current, there has been little or no change to his finances for several years. Applicant claims that he is on a payment plan and working with a debt management company, but provides no further detail about this in the record. It is not clear from the evidence whether Applicant has been able to resolve any more than one or two of the debts listed in the SOR. Although he hired a debt



management firm to assist him in resolving his debt, and has expressed the intent to pay his bills, there is inadequate evidence to show what if anything he has actually been done. Applicant has not demonstrated that he is in control of his finances or that he can pay his bills. Under the circumstances, Applicant has failed to meet his burden. None of the mitigating conditions set forth above under Guideline F provide full mitigation.

### **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; (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 Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant served two successful tours as a linguist alongside U.S. forces in combat zones in 2011 and 2013. He was also deployed overseas for a period in 2019. He is commended for his dedication to U.S. missions in the past. However, in regard to his finances, Applicant has fallen short. He has not shown that he is financially responsible at the level of responsibility required in holding a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Financial Considerations security concerns. The Foreign Influence security concern has been mitigated.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a, through 1.d.:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a.	For Applicant
Subparagraphs 2.b through 2.f.:	Against Applicant
Subparagraph 2.g.	For Applicant
Subparagraphs 2.h. through 2.i:	Against Applicant
Subparagraph 2.j.	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge