



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02798  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin P. Thompson, Department Counsel  
For Applicant: *Pro se*

August 2, 2021

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On April 23, 2019, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). On November 29, 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 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 January 20, 2020. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On March 11, 2021, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing ten Items, was mailed to Applicant and received by him on March 27, 2021. 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 failed to submit a response to the FORM. Applicant did not object to Government Items 1 through 10, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 10.

### **Request for Administrative Notice**

The Government requested I take administrative notice of certain facts relating to the country of Afghanistan. Department Counsel provided an eight-page summary of the facts, supported by ten 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. (Government Exhibit 9.) They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

The Government also requested that I take administrative notice of certain facts relating to the country of the People's Republic of China. Department Counsel provided a fifteen-page summary of the facts, supported by thirty-six Government documents pertaining to China. The documents provided elaboration and context for the summary. I take administrative notice of the facts included in the U/S. Government reports. (Government Exhibit 10.) 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 45 years old. He has a high school diploma. He is seeking employment with a defense contractor as a linguist. He is seeking to obtain a security clearance in connection with his employment.

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

Applicant was born in Afghanistan in 1986. He moved between Iran, Pakistan, and Afghanistan until he emigrated to the U.S. in March 2011. Applicant came to the U.S. on a K-1 fiance visa. He was married to this wife from March 2011 until they divorced in April 2015. Applicant became a U.S. citizen in September 2017. He has not taken any action to renounce his Afghan citizenship. Applicant's parents, seven brothers, and four sisters are citizens and residents of Afghanistan. Applicant stated that he sent money to his family in Afghanistan four or five times, totaling about \$5,000 until about 2017, to help provide their support. During his April 2019 Counterintelligence screening with the U.S Army, Applicant reported speaking with his mother on a weekly basis, his father on a monthly basis, and his siblings anywhere between monthly and annually. In his answer to the SOR dated January 2020, Applicant stated that he is "not in contact with his family members at any level."

In about November 2017 Applicant and his girlfriend, a citizen of China, moved in together. Applicant's girlfriend was pregnant with another man's child. About five months after her child was born, Applicant's girlfriend sent her baby son to live with her parents in China. Applicant's close relationship and cohabitation with his girlfriend made her aware of his background investigation and the fact that he was applying for a job with the U.S. government. Applicant underwent a Counterintelligence screening with the U.S. Army on April 2019. During that screening, which asked him about contact with any foreign national, he disclosed his Chinese-national landlords, but failed to mention his girlfriend. (Government Exhibit 5.) Applicant also failed to list his girlfriend as a foreign contact or a cohabitant on his April 2019 security clearance application. (Government Exhibit 4.) It was not until May 2019 during his personal subject interview that he admitted to living with a Chinese citizen since November 2017. (Government Exhibit 8.) It was about this time that Applicant's girlfriend's parents came to visit their daughter along with her young son. Applicant met his girlfriend's parents but never revealed the relationship to his own family and friend because he did not want them to know he was dating a Chinese woman who was pregnant when they met. Applicant's Answer to the SOR indicates that he ended the relationship with his girlfriend in July 2019, when he deployed to Afghanistan to work as a linguist. (Government Exhibit 2.)

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

Applicant is indebted to five creditors listed in the SOR, totaling in excess of \$53,000. He admits each of the allegations set forth in the SOR under this guideline. Applicant's credit reports dated April 27, 2019, and May 27, 2020, confirm this indebtedness. (Government Exhibits 6 and 7.)

In October or November 2017, after becoming a U.S. citizen, Applicant started a food truck business with a friend. To fund the project, Applicant took out a personal loan in the amount of \$30,000 from one lender, and a personal loan in the amount of \$15,000 from another lender. (Government Exhibit 8.) The business failed within a few months. Applicant's business partner, his friend, returned to Afghanistan. Shortly thereafter, Applicant defaulted on both personal loans. He was also unable to pay his credit card bills. Since then, Applicant has been unable to resolve his delinquent accounts. He believes that his job as a linguist will allow him to pay his debts. (Government Exhibit 2.)

Applicant's financial distress became apparent after his failed business. The debt became overwhelming, and he stopped making payments on his debts. He tried calling a debt relief company, but thought it was a scam and never followed through. He has made no attempt to repay the debt. He states that he plans to pay his debt when he starts earning more money.

The following debts set forth in the SOR became delinquent and are of security significance: 2.a. A credit card account was charged off in the amount of approximately \$4,323. 2.b. A debt owed to a creditor was charged off in the amount of approximately \$750. 2.c. A debt owed to a creditor was charged off in the amount of approximately

\$3,648. 2.d. A debt owed to a creditor was charged off in the amount of approximately \$16,553. 2.e. A debt owed to a creditor was charged off in the amount of approximately \$30,000. 2.e. A debt owed to a creditor was charged off in the amount of approximately \$14,987.

I have taken administrative notice of the following information concerning the country of Afghanistan, which includes 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.

I have also taken administrative notice of the following information concerning the country of the People's Republic of China, which includes the Government's briefs and supportive documents. The United States faces a continuing threat to its national security from Chinese intelligence collections operations. More than 90 percent of its state-backed economic espionage cases and two-thirds of its theft of trade secret cases involve China. China presents a persistent cyber espionage threat and a growing attack threat to our core military and critical infrastructure systems, and China remains the most active strategic competitor responsible for cyber espionage against the U.S. Government, corporations, and allies.

## **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;

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country;

(d) counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security; 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.

Applicant's immediate foreign family relatives include his mother, father, seven brothers, and four sisters who are citizens and residents of Afghanistan. Applicant's girlfriend and cohabitant is a citizen of China. Applicant's foreign connections pose a significant security risk.

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

(a) the nature of the relationships with foreign persons, the country in which these person 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 has thirteen immediate family members who are citizens and residents of Afghanistan. Applicant has had regular, consistent contact with all of them, especially with his parents, until sometime between April 2019 and January 2020. Applicant now claims that he has no contact with his family at any level, and gives no explanation for this change or if he plans to resume contact. Applicant's close relationship with his family members and the conditions in Afghanistan present a heightened risk that Applicant could be exploited, induced, manipulated, pressured, or coerced into acting against the interest of the United States. There is no evidence in the record to support mitigation in this instance. Under the circumstances, Applicant's foreign contacts in Afghanistan do pose a heightened security risk for the United States Government.

Applicant relationship with his girlfriend, a Chinese citizen, from November 2017 to July 2019 is also very concerning. Applicant admits that she was aware of his ongoing background investigation and the fact that he intended to deploy as a linguist supporting the U.S. Army. He failed to identify her as a close and continuing foreign contact on his security clearance application, and during his Counterintelligence screening investigation, despite disclosing his Chinese-national landlords. Applicant also concealed his relationship with his Chinese girlfriend from his own family and friends, apparently concerned that they may not approve. This vulnerability is evident and most concerning as it could present a situation where he could be susceptible to coercion or exploitation from foreign parties or blackmailed for the benefit of China. Under the circumstances, Applicant has failed to meet his burden, and Guideline B is found against the Applicant.

#### **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 is excessively indebted totaling more than \$53,000. He has not paid back the two personal loans he obtained to start a business in 2017, and has not been able to pay off several delinquent credit card debts. Each 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 a failed business, contributed to his financial problems. He took out personal loans and incurred excessive debt that he has not been able to pay. Today, four years later, he remains excessively indebted. There is no evidence in the record that Applicant has even made any attempt to pay his debts, as he has shown no significant progress. There has been no change to his finances for several years. 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. This guideline is found against the Applicant.



## 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 has not shown that he is qualified for access to classified information. His close foreign contacts with family members in Afghanistan; the nature of his relationship with his Chinese girlfriend, and his attempt to hide her from the Government; and his excessive indebtedness, preclude him from security clearance eligibility.

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 Foreign Influence and Financial Considerations security concerns.

## 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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b .	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.e.	Against 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