



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



In the matter of: )  
)  
) ISCR Case No. 19-03966  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

04/28/2021

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 29, 2020, the Defense Counterintelligence and Security Agency (DCSA) 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's answer to the SOR was undated. She requested a decision based on the administrative record. The Government requested a hearing before an administrative judge. The case was assigned to me on March 9, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 18, 2021. I convened the

hearing as scheduled on April 12, 2021. The Government offered exhibits (GE) 1 through 3. Applicant offered exhibits (AE) A through E. There were no objections to any exhibits and all exhibits were admitted into evidence without objection. DOHA received the hearing transcript on April 23, 2021.

Department Counsel requested that I take administrative notice of certain facts about Afghanistan and Saudi Arabia. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in Afghanistan and Saudi Arabia.

### **Findings of Fact**

Applicant partially admitted and denied the SOR allegations in ¶¶ 1.a and 1.b. She admitted the SOR allegation in ¶ 1.c and denied the allegation ¶ 1.d. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. She was born in Afghanistan. She moved to the United States in 1982 as a refugee and became a naturalized citizen in 1990. She married an Afghan citizen in the United States in 1982. It was an arranged marriage. He was studying in the United States at the time. They had a child born in the U.S. in 1984. Her son is a dual citizen of the United States and Afghanistan. He lives in Afghanistan. Applicant divorced in 1992. She earned an associate's degree in 1992. In 1993, she remarried a citizen of Saudi Arabia in the United States. They had a child born in the United States in 1996. Her son is a dual citizen of the United States and Saudi Arabia. Applicant lived in Saudi Arabia with her husband from approximately 1995 to 2017. They separated in 2017 and divorced in July 2020. Her son from this marriage lives with her in the United States. (Tr. 23-30, 61-62)

Applicant testified that her first husband was physically, sexually, and emotionally abusive. In 1984, he tried to kill her in front of their son. She escaped and a friend notified her that her husband hired a hitman to kill her. She filed a police report. She moved to a different city and filed for divorce. He found her in the new city. He convinced her to let him see their son. He kidnapped the child and told her if she wanted to see the child, she had to return to his house and beg for forgiveness. She agreed and was physically and sexually abused. She fled again. She was waiting for the divorce to be finalized and she was confident she would get full custody of her son. The weekend before the proceedings, her husband kidnapped the son and fled to Afghanistan. Applicant reported the abduction to the FBI, but because a custody determination had not been entered, there was nothing they could do. Her husband also had a nephew that lived in the United States who threatened to kill her. (Tr. 23-35, 62-64; GE 3)

Applicant stated that she sent relatives to Afghanistan to find her son. They were beaten and threatened with death by the husband. Applicant sent a letter to the President of Afghanistan about the abduction. She testified that the President contacted Applicant's

husband and was told that Applicant was addicted to drugs and sold the son. When the boy was 18 years old, one of Applicant's relatives was able to gain access to him. The son had been told that his mother was killed in a car accident. Applicant testified she did not have contact with her son for 17 years. Applicant wrote a book about her years trying to find her son. (Tr. 35-44)

Applicant became aware that her ex-husband held a Deputy Minister position in the Afghan government sometime after 2001. When the son learned his mother was alive, he confronted his father and was told that his mother had divorced him and sold the son. He ran away from his father and contacted his mother asking to live with her. They reunited in September 2003 in Pakistan. Applicant told her current husband that she had found her first son. The son went to Saudi Arabia where Applicant was living at the time. (Tr. 38-44)

After his arrival in Saudi Arabia, Applicant's older son was abusive to his younger half-brother and to her. He choked his brother. He told Applicant that he wanted to kill her. He assaulted Applicant. He became more aggressive. Applicant took him to a doctor. After talking to his father on the telephone, the son again told his mother that he wanted to kill her and slice her with a knife. His reason was because divorce is not recognized in his culture, and she had divorced his father. In addition to threatening to kill Applicant, he told her was going to rape her and kill her younger son. In 2004, she bought him a plane ticket to leave the Saudi Arabia, which he did. In her November 2017 interview with a government investigator, she stated that since her son left in 2004, he will randomly contact her and either ask for forgiveness or threaten to kill and rape her. (Tr. 35-45; AE E)

Applicant's eldest son married in 2005. At some point he was living in the United States. He contacted Applicant in Saudi Arabia, cried and apologized for his conduct. He told her he wanted to see her. Applicant talked with his wife and learned he had applied to be a linguist with the U.S. government. He had passed the initial screening and was in training in Georgia. Her son left the training and returned to Afghanistan in 2009. Applicant traveled to the United States for a visit, but it is unknown if at the time she traveled, she thought she would be visiting her son and his family or if she was aware he had already left for Afghanistan. His wife told Applicant that he abandoned her and the two children. She told Applicant that her son had knives in the house and was planning to kill Applicant when she visited. Applicant testified she does not know where her grandchildren or their mother live. She has had no further contact. (Tr. 45-48, 71-73)

Applicant's oldest son now lives in Afghanistan. In 2016, he contacted Applicant. He told her he remarried and has a son. He told Applicant to send him money as a condition for him to talk to her. She did not. She testified that he just wanted to talk. He wanted to know about Applicant's family and he threatened her. (Tr. 48-51, 57-58, 60-66, 73)

Applicant testified that her ex-husband has lots of strong connections and is a "player." He has worked for the Afghan government and also with the "Red Army" when

it was in Afghanistan. Her ex-husband now owns a hotel in Afghanistan and their son works for him. During Applicant's background interview with a government investigator, she told the investigator that through family connections she knows that if she returns to Afghanistan she will be killed. She testified that her son told her if she returned to Afghanistan he will kill her. She also said her ex-husband told her if she returned to Afghanistan she would be killed and he would send her body parts back to the United States. Applicant testified that she worked for the U.S. government as a linguist in Afghanistan from March 2018 to February 2020. She testified that her ex-husband and son were unaware that she was in Afghanistan, and she had no contact with them. (Tr. 48-51, 57-58, 60-66)

Applicant completed a Counterintelligence Focused Security Screening Questionnaire (CFSSQ) in October 2017. In it she disclosed that her first husband is a current member of the Taliban in Afghanistan and has been since 1988. She disclosed that she maintained annual contact with her eldest son in Afghanistan through Facebook and "WhatsApp." Her last contact was in June 2017. In the section of the Questionnaire requesting disclosure of any contacts with ties to terrorist organizations, Applicant definitively listed her first husband as a member of the Taliban. She signed this document "as true and accurate to the best of my knowledge."

At her hearing, Applicant denied the entries and explained that she said her first husband was working with the Taliban, and after 9/11 he was a Deputy Minister in Afghanistan. She said she does not know if he is a member of the Taliban, but he works with whomever is in power and is manipulative. She is sure he worked with the Taliban in the past. She said he could be a member, but she did not know. She said when the Taliban came into power, her first husband was very powerful and was an opportunist player. She testified that he has worked with "Red Army" and the Afghan communist regime in the past. Applicant also denied she had contact with her son through "Whatsapp" as listed on her CFSSQ. I did not find Applicant's testimony credible. (Tr. 51-58, 73-77; GE 2 pages 14-15, 25-27; AE D)

Applicant testified that if her eldest son attempts to communicate with her she will refuse because he is mentally unstable. She does not trust him. She does not want to put herself or her younger son in danger. In her November 2017 background interview, she told the government investigator that she does not reach out to her eldest son, but leaves a way for him to contact her in hopes that one day he will be different. She denied that she said to the investigator that she would leave a way for her eldest son to contact her, and he misinterpreted her. Her older son has contacted her through Facebook messenger in the past. She said she unfriended him on Facebook. She confirmed that she has not had contact with her first husband since 1986. (Tr. 57-59, 73-80; GE 3)

Applicant lived with her second husband from 2004 until 2017 in Saudi Arabia. She is not a dual citizen. Her husband is a marketing manager. Her husband owns a house there and although she contributed money to the purchase of it, she has no ownership rights to it. Her younger son will likely inherit the house. He is a dual citizen of the United States and Saudi Arabia. He lives in the United States and is a student. He visits his father

in Saudi Arabia, but plans to reside in the United States. Neither Applicant nor her son receive any financial support from her second husband. She explained the delay in her divorce was because when she moved back to the United States in 2017, she was required to be a resident for six months in the state where she wanted to file. Then she got a job as a linguist and moved to Afghanistan so the divorce was delayed. When she returned in March 2020, she continued the process and was granted the divorce in December 2020. (Tr. 51-52, 60, 81-89; GE 1, 3; AE B, C)

Applicant testified that she has not spoken to her second husband since she left in December 2017. She believes her son has contact with his father approximately every two to three months, but she does not know that for certain. He last visited his father in 2019. Applicant testified she does not maintain any Saudi friends. She does have some American friends who are married to Saudis. Applicant's sister and cousin live in the United States and they maintain close contact. Applicant no longer has a Saudi bank account. She presently owns a house in the United States that she purchased for approximately \$182,000. Her sister helped her financially. Applicant has a pension plan worth about \$150,000. (Tr. 51-52, 60, 89-97; GE 1, 3; AE B, C)

A witness testified on behalf of Applicant. He is a retired Army Reserve officer and is working as a civilian contractor. He holds a security clearance. He has experience working in the Middle East. He has known Applicant since 2013. He is aware of her arranged marriage to her first husband, his abusive treatment, and the kidnapping of her son. He believes she is an honorable person. He has no concerns with her holding a security clearance. (Tr. 99-107; AE A)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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**

The security concern 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. The following 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 and her second husband have been separated since 2017 and were divorced in 2020. She has not had any contact with him since their separation. She does not own any property or have any financial interests in Saudi Arabia. Insufficient evidence was raised under the Guideline B, foreign influence security concerns regarding Applicant's second husband and any financial interests she has in Saudi Arabia. I find for Applicant for SOR ¶¶ 1.c and 1.d.

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, through her eldest son and her first husband who reside in Afghanistan. Although Applicant claims she has no contact with her eldest son, she has a history of wanting to reestablish a relationship with him and leaving a way for him to contact her. Her behavior is that of a mother to a child, regardless of past circumstances. The above disqualifying conditions have been raised by the evidence as to the SOR ¶¶ 1.a and 1.b.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign person, the country in which the 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.

I considered the totality of Applicant's ties to Afghanistan through her eldest son and her first husband. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant. 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. Although she has not had contact with her first husband for many years, in 2017, she told a government investigator that he was a member of the Taliban. She later testified that she did not know if he was a member, but asserted that he is well-connected with whomever is in power and he could be a Taliban member. She said he is a "player" and an opportunist. He has held a high position in the Afghan government. He has threatened to kill her if she returned to Afghanistan. She testified that he is a violent person.

After her husband kidnapped their son the first time, she returned to him and endured abuse so she could see her son. He kidnapped the son a second time, and she tragically did not have contact with him for 17 years. She spent years trying to find him and wrote a book about it. Her son now works for his father in his hotel. Based on Applicant's testimony and statements to a government investigator, her son is also violent and through the years has contacted her asking for forgiveness and threatening to kill her. She has repeatedly resumed contact even after his violent threats. As a mother she is always hopeful to reestablish a relationship with her child, despite her assertions that she would refuse to communicate with him. Based on her first husband's willingness to work with the Taliban and those in power, and his past conduct of using their son as a pawn, I cannot find that it is unlikely that Applicant would be placed in a position to having to choose between the United States and her son. I cannot find or expect a mother to resolve any conflict of interest against her son, regardless of their past relationship. This relationship cannot be considered casual regardless of the frequency of contact. I find none of the above mitigating conditions apply.

### **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.

Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline B, foreign influence.

### **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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.d:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge