



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



In the matter of:)	
)	
)	ISCR Case No. 23-02263
)	
Applicant for Security Clearance)	

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel
For Applicant: Christopher Snowden, Esq. (Response to SOR only)

08/25/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and E (Personal Conduct). Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 4, 2022. On October 1, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B (Foreign Influence) and E (Personal Conduct). The DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR twice. In his first answer, he was represented by an attorney and he submitted Applicant's Exhibits (AX A through D, which were admitted in evidence without objection. Subsequently, he submitted a *pro se* answer and attached five documents, which were marked as SOR Response (SR) 1 through 5) and admitted in evidence without objection. Department Counsel was ready to proceed on December 12, 2024. The case was assigned to me on May 7, 2025. On May 14, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 24, 2025. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted without objection. Department Counsel requested that I take administrative notice of relevant facts about Afghanistan, and I granted the request. Applicant testified but did not present the testimony of any other witnesses. After the presentation of evidence by both sides, Department Counsel moved to withdraw the allegations under Guideline E, and I granted the motion. (Tr. 67) I kept the record open until July 30, 2025, to enable Applicant to submit additional documentary evidence, and he timely submitted AX E through L, which were admitted without objection. DOHA received the transcript of the hearing on July 3, 2025.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 37-year-old native of Afghanistan. He and his family left Afghanistan in June 1994 because of an ongoing civil war, and moved to Pakistan. He and his family moved back to Afghanistan in November 2004. He and one of his brothers worked as linguists for the U.S. military from 2009 to 2014. (Tr. 34-35) He received numerous commendations and certificates of appreciation for his outstanding service in a hostile environment. (AX E through K) He entered the United States in October 2014 on a special immigration visa. (AX L) In 2018, he was hired as a linguist to support U.S. military forces in Afghanistan. In 2019, he returned to the United States and became a U.S. citizen. He has now been hired by a defense contractor to work as a translator. (GX 1; GX 2) His family members in Afghanistan do not know that he is a linguist employed by a U.S. defense contractor. They think that he works in a warehouse. (Tr. 42) He does not hold a current security clearance.

The evidence concerning the allegations in the SOR is summarized below.

SOR ¶ 1.a: Applicant's mother, two brothers, two sisters, a brother-in-law, and uncle are citizens and residents of Afghanistan. Applicant admitted this allegation, except for the reference to "two brothers." Only one brother lives in Afghanistan, and Applicant talks to him on the WhatsApp messaging application "every week or every couple days." (Tr. 48). Applicant has a brother in the Netherlands, a brother in Germany, and two brothers in the United States, one of whom was previously employed by a U.S. contractor as a linguist. (Tr. 57) Using WhatsApp, he talks to his older sister once every month or two. He talks to his mother "every week, every couple days." He talks to his younger sister at the same time as he talks to his mother. (Tr. 52)

In 2016, Applicant sent around \$600 to \$800 per month to his brother in Afghanistan, to be distributed to his family. Since then, he has not sent any money to his family. (Tr. 50)

SOR ¶ 1.b: Applicant's uncle is an employee of the Afghani Government. Applicant admitted this allegation in his answer to the SOR. His uncle is a medical doctor working in a public hospital. He began working before the Taliban seized power and he has continued to work in the same hospital, providing medical care to citizens of Afghanistan. Applicant has no contact with him. (Tr. 53-54)

SOR ¶ 1.c: Applicant's brother is a citizen of Afghanistan residing in Germany. Applicant admitted this allegation in his answer to the SOR. His brother was employed as an administrator by the German government in a public works water supply program when the Taliban seized power. He was evacuated to Germany, where he now resides.

SOR ¶ 1.d: Some of Applicant's family members living in Afghanistan have kept their actual address and location secret from Applicant due to fear that their communications were being monitored by the Taliban, and they fear that the Taliban may capture or harm them because of Applicant's work with U.S. defense contractors. Applicant admitted this allegation in his answer to the SOR. He explained that there were rumors that the Taliban was targeting linguists who had worked for U.S. contractors before the Taliban seized power. Applicant's family and many of his coworkers are "hyper aware" that their telephone conversations are potentially being monitored, and they avoid disclosing details and locations during conversations. Applicant testified that he contacts his family only on WhatsApp and does so in a closed room in his home so that they do not know his location. (Tr. 49)

SOR ¶ 1.e: Applicant's neighbor is a citizen of China. Applicant admitted this allegation in his answer to the SOR but asserted that he did not know that his neighbor was not a U.S. citizen. He testified that his neighbor had lived next to him since 2007 and he assumed that she was a U.S. citizen. He now knows that she has a "green card." They have normal neighborly interactions. (Tr. 45-48) Department Counsel conceded that there was no evidence that Applicant has any relationship of security significance with his neighbor. (Tr. 69)

SOR ¶ 1.f: While deployed overseas, Applicant used the address of his Chinese neighbor for his personal mail, and gave her permission to open his mail, including his W-2, which contained personal identifiable information and work position information. Applicant admitted this allegation in his answer to the SOR. At the hearing, he explained that he was deployed in February 2020, and he had no one to take care of his mail while he was deployed. He was expecting to receive his W-2, and he needed it to timely file his federal tax return. He authorized his neighbor to open his mail, photograph his W-2, and send it to him so that he could timely file his tax returns. (Tr. 46)

Applicant has accumulated substantial assets in the United States. He purchased one home as a residence and another as an investment. (Tr. 60) He believes that he has

total equity of about \$180,000 in the two houses. (Tr. 57) He has about \$8,000 in a 401(k) account and about \$106,000 in a private investment account. (Tr. 62)

I have taken administrative notice of the following facts regarding Afghanistan. The United States established diplomatic ties with Afghanistan in 2035. In 2012, the United States and Afghanistan entered into the Strategic Partnership Agreement to strengthen their bilateral relationship, support Afghanistan's capabilities as a partner, and improve the lives of the Afghan people. In February 2020, the United States and the Taliban signed the Doha Agreement, which led to the withdrawal of U.S. and Allied forces from Afghanistan and the forcible takeover of the government of Afghanistan in August 2021. Since August 2021, the United States has stopped providing aid to Afghanistan and suspended operations at the U.S. Embassy in Kabul.

The Taliban did not formally change existing laws. Instead, they promulgated edicts that contradicted those laws and were inconsistent with Afghanistan's obligations under international conventions. They have engaged in violence and abuse of citizens, disregard for human rights, serious corruption, terrorism, and random violence. The U.S. Department of State Advisory is Level 4: "Do not travel to Afghanistan due to terrorism, risk of wrongful detention, civil unrest, kidnapping, and crime."

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline 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 maybe 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 following disqualifying conditions are relevant:

AG ¶ 7(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

AG ¶ 7(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.

AG ¶¶ 7(a) and 7(b) are established for Applicant's contacts and connections to his family members. They are not established for his casual and intermittent contacts with his neighbor, who is a citizen of China residing in the United States. No other disqualifying conditions are established for his contacts with his Chinese neighbor.

The following mitigating condition is potentially applicable:

AG ¶ 8(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.

Applicant's long history of support for U.S. military forces under dangerous conditions. His numerous commendations reflect his dedication and loyalty. He has become a U.S. citizen. He has substantial property and financial interests in the United States. He is seeking to continue his support for U.S. interests by working as a translator.

Generally, an applicant's prior history of complying with security procedures and regulations is of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying circumstances. However, where an applicant has established by credible, independent evidence that his or her loyalty and dependability occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to the national security, such circumstances give credibility to an applicant's assertion that he or she will recognize, resist, and report a foreign power or terrorist's attempts at coercion or exploitation. In this case, Applicant has a track record of dedicated service in high-risk circumstances in which he made significant contributions to national security. See ISCR

Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008); ISCR Case No. 06-25928 at 4 (App. Bd. Apr 9, 2008). Thus, I conclude that AG ¶ 8(b) is established.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d).

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his relationships with family members in Afghanistan.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	WITHDRAWN
Subparagraph 2.a:	Withdrawn

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge