



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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 {Redacted} ) ISCR Case No. 12-05231  
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 Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: Catie E. Young, Attorney At Law  
Griffith, Young & Lass

April 30, 2014

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on June 2, 2010, and August 8, 2011. (Government Exhibits 1 and 2.) On December 3, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

The Applicant responded to the SOR on January 10, 2013, and he requested an administrative hearing before a DOHA Administrative Judge. This case was first assigned to an Administrative Judge on May 15, 2013. At that time, Applicant was on assignment in Afghanistan until December 2013. The case was transferred to another Administrative Judge on December 19, 2013. A notice of hearing was issued on December 20, 2013, and a hearing by video-conference was scheduled for January 2, 2014. At Applicant's attorney's request, the case was transferred to Woodland Hills, California, on January 17, 2014. The case was assigned to the undersigned Administrative Judge on January 27, 2014, and a notice of hearing was issued on

February 13, 2014, scheduling the hearing for March 21, 2014. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant testified on his own behalf. He also presented twenty exhibits, referred to as Applicant's Exhibits A through T, which were also admitted into evidence without objection. The record remained open until close of business on April 1, 2014, to allow the Applicant to submit additional documentation. The Applicant requested an extension until April 4, 2014, but submitted no additional documents. The official transcript (Tr.) was received on April 1, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **REQUEST FOR ADMINISTRATIVE NOTICE**

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Afghanistan. (See Tr. pp. 23-26.) There was no objection from Applicant. (See Tr. p. 26.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **FINDING OF FACTS**

The Applicant is 63 years old and is divorced a third time, with two children. He is employed with a defense contractor and holds the position as a Cultural Advisor and Linguist, and a security clearance in necessary in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence, which could result in the compromise of classified information.

Applicant was born in {redacted} Afghanistan in {redacted}. He grew up in a very influential family, and studied at the school of law and political science at the university there. While in college, he met his first wife, who was also born in {redacted} [Afghanistan] and they were married in 1974. They have two children who were born in Afghanistan. Both of Applicant's children are now naturalized United States citizens, and reside with the Applicant in the United States. Applicant divorced his first wife in 1995. He married his second wife, a woman from Armenia, who he met on line, in 2001. After three months they filed for divorce. Applicant married a third time in 2010, and his divorce was final December 2013.

After graduating from college, Applicant served in the Afghan military, in an engineering unit, for six months, to fulfill the government mandate of mandatory military service. He reached the rank of second lieutenant. Upon completion of his military

service, Applicant worked at a University in Afghanistan from 1976 to 1978. In 1978 Applicant became a father to his first born, and lost his job, as a result of political turmoil occurring in Afghanistan. He found employment in the banking industry from 1978 to 1987. {Redacted}

In 1979 Soviet Union forces invaded Afghanistan and took over the government in Kabul. Applicant strongly opposed the Soviet political agenda and the suffering it brought to the Afghan people. He desired to raise his family in a peaceful environment and wanted a better life for his family. In 1979 Applicant escaped from Afghanistan and went to West Germany. At that time, Applicant's brother was a senior officer {redacted} of Afghanistan, and Applicant's criticism and escape from Afghanistan was not well received. The Afghan Government and their intelligence element, kidnaped the Applicant and brought him back to Afghanistan, against his will, and placed him under surveillance.

In 1987 Applicant attempted to escape from Afghanistan a second time. This time, he was arrested by the Secret police, and put in jail for four months. (Tr. pp. 63-64.) At this time, Applicant's brother was {redacted} [a high-ranking government official in the Afghanistan government] Instead, Applicant secretly contacted {redacted} [an individual] who had a great deal of influence in Kabul City and in the Government. Applicant asked {redacted} [the individual] to help him escape Afghanistan and seek asylum in another country. Applicant testified that he had previously met {redacted} [the individual] in 1987, and later learned from {redacted} [him] that they were classmates in elementary school. An elaborate, complicated, and dangerous escape plan was designed. This was a physically difficult and emotionally draining journey, for the most part by foot, across Afghanistan's rough mountainous terrain filled with land mines and other perils just to reach Pakistan, all in the midst of a civil war between different guerrilla factions and the Afghan Government. It was winter time and snowing, which made this venture even more difficult. After an eighteen-day journey, Applicant, his wife and his children, successfully escaped into Pakistan. (Tr. p. 71.) {Redacted} Once in Pakistan, Applicant applied for political asylum. In August 1988, Applicant and his family were granted political asylum and came to the United States. (Government Exhibit 6.)

Applicant indicated that his transition from Afghanistan to the United States was a difficult one. He left his country, culture, family, friends, home, career and social safety net and all of his assets behind. He realized that he would have to work hard to accomplish the things he desired. His degree in Afghanistan was useless in the United States. He became homeless for a while and slept in his car. Putting his pride aside, he started working in the service industry. At one time Applicant had three jobs to support his family. He quit one job to attend pharmacy technician school and received his license, just about the time the economy fell and pharmaceutical companies froze their hiring. (Applicant's Exhibits M and N.)

In 1997, and again in 2002, Applicant applied for United States citizenship. In April 1997, Applicant was arrested for misdemeanor assault. This arrest made him ineligible for naturalized citizenship and delayed the process. In September 2009 Applicant became a naturalized United States citizen, and he was issued an American passport at that time. He now considers himself to be an Afghan-American. From

1998 to 2009, prior to becoming a naturalized United States citizen, while the Applicant held only a green card, he used his Afghani passport for foreign travel. Applicant still possesses the passport, but it expired in 2006 and is not valid. Applicant has no intentions to renew it.

Applicant has lived in the United States for the past twenty-five years, and has held a number of jobs to support his family. In August 2011 he began working for his current employer. He was issued an interim clearance, and was deployed overseas from September 2011 to December 2013. Applicant testified that he is fluent in the languages of Pashto, Dari, and English. (Tr. p. 49.) He believes he is in high demand because of his qualifications. (Tr. p 57.)

Applicant had two brothers, who were at one time residents and citizens of Afghanistan. Applicant's older brother {redacted} [was a high ranking government official in Afghanistan from 1986 to 1992.] Applicant's younger brother {redacted} [also held an appointment at a high level with the Afghanistan government.] In 1992, {redacted} [Applicant's brothers] were taken prisoner by the Mujihadeen and held captive until 1996. In 1996, the Taliban murdered both brothers. {Redacted} (Government Exhibit 4 and Tr. pp. 91-94.)

Applicant's parents are both deceased. (Tr. p. 87.) Applicant's father passed away in 1983. His mother was hit by a bus and killed in 1989/1990. Applicant does not believe it was terrorist related because he heard from relatives of his ex-wife that it was just an accident. (Tr. pp. 89-90.)

Applicant had three brothers-in-laws who were at one time citizens and residents of Afghanistan. Two of them are now naturalized United States citizens. Two of them were working as Linguists in Afghanistan like the Applicant. Applicant's ex-mother-in-law and ex-wife were also linguists in Afghanistan. Applicant states that his family members who have worked as linguists have all held security clearances. (Tr. p. 109.) None of them are currently working as linguists. Applicant contends that the last time he had contact with any of his brothers-in-law was about five or six years ago. (Tr. p. 110-111.)

Applicant states that he no longer has family in Afghanistan. Where he works in Afghanistan, there is a completely new generation, and he is not recognized {redacted} Applicant states that he is a loyal United States citizen. He works, pays his taxes, supports his family, and is a civilized person in society. (Tr. p. 104.)

Applicant explained that the linguist position is divided into Categories 1, 2, and 3. If he receives a Top Secret Clearance, he believes he is a candidate for a Category 3 linguist position. He does not know where he will be assigned or what he will be doing. As a Category 3 linguist, he hopes to stay and work on the base where he feels safe and secure, but there are no guarantees. He admits that Category 3 linguists are on occasion assigned to missions outside of the base, if needed. If this were to occur, Applicant would be in a much more dangerous situation, as are Category 1 and Category 2 linguists. (Tr. 128-131.) Applicant conceded that after time, people on base have eventually figured out who he is. (Tr. p. 131.)

Applicant provided numerous letters of recommendation from the Brigade Linguist Manager, another Linguist Manager, coworkers, close friends, a past supervisor, and several family members. They all attest to Applicant's knowledge, competence, intelligence, honesty, trustworthiness and dependability. On the job, Applicant is said to have provided the team with masterful translation and excellent insights into the culture. His contribution is described as significant, and he is respected as a professional of the highest caliber. His ability to build rapport with the local national leadership was extremely valuable in some of the most fragile and dangerous areas. His extraordinary linguist abilities as well as his high moral character and work ethic is admired by all who know him. At home, he is known as a good family man who has worked hard to provide a good life and education for his children. He is a hard worker, who has for almost 19 years worked two jobs to support his family. He is recommended for a security clearance. (Applicant's Exhibits A through K.) Applicant provided copies of pictures of him at work. (Applicant's Exhibit R.)

Applicant's performance appraisal for 2013 reflects ratings of "exceeds expectations" in every category. Applicant is said to, always be on time, never turns down an assignment, and is a top notch interpreter. (Applicant's Exhibit 0.)

Applicant has received a number of accolades for his outstanding performance on the job that include awards, certificates of Achievement and certificates of merit and appreciation. (Applicant's Exhibit L.)

I have taken official notice of the following facts concerning Afghanistan. Afghanistan is an Islamic republic. It has been an independent nation since August 19, 1919, after the British relinquished control. In December 1979 Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union. In mid-1990's the Taliban rose to power largely due to the anarchy and the divisions of the country among warlords that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin-Laden since the mid-1990's, to al-Qa'ida generally, and to other terrorist organizations. After September 11, 2001 terrorist attacks, U.S. demands that Afghanistan expel Bin-laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001.

Although there has been some progress since the Taliban was deposed, Afghanistan still faces many daunting challenges, principally defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic and political infrastructure. Human rights problems included extrajudicial killings; torture and other abuse; poor prison conditions; widespread official impunity; ineffective government investigations of local security forces; arbitrary arrest and detention; judicial corruption; violation of privacy rights; restrictions of freedom of religion; limits on freedom of movement; violence and societal discrimination against women; sexual abuse of children; abuses against minorities; trafficking in persons; abuse of worker rights; and child labor. Overall, the State Department has declared that

the security threat to all American citizens in Afghanistan remains critical, and travel to all areas of Afghanistan remains unsafe, due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of terrorist attacks.

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline B (Foreign Influence)

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

#### Conditions that could raise a security concern:

7.(a) contact 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.

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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;

- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The voluntariness of participation;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## **CONCLUSION**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be subject to foreign influence that may lead to poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's situation and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The

Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

Because of the scope and nature of the Applicant's connections to Afghanistan, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline B of the SOR.

Under Foreign Influence, Guideline B, Disqualifying Condition 7.(a) *contact 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 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information* apply. None of the mitigating conditions are applicable.

The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization or country has interests inimical to those of the United States. ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to Government coercion or inducement. The risk of coercion, persuasion, or duress is greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States places a significant but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his foreign family members do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United State and a desire to protect foreign family members.

Applicant is the brother of {redacted} [two former high-ranking Afghani government officials.] Both of Applicant's brothers were murdered by the Taliban. Applicant and his family's story is known through media and literature. Although he states that he has no close familial relationship nor any relatives in Afghanistan, he is who he is. And, as such, Applicant has strong emotional ties and bonds to Afghanistan. His family is a part of the country's history. The unique nature of his familial relationship places him at a heightened risk of retaliation, pressure or coercion, which he admits. The fact that his brothers are no longer living is really immaterial. The conditions in Afghanistan are volatile and dangerous due primarily to the significant economic, political, and military unrest, as well as the ongoing robust terrorist threat. The political climate in Afghanistan, coupled with who the Applicant's relatives were present a risk



that he may be placed in a position of choosing between his interests and the interests of the United States. Therefore, Applicant's foreign contacts do pose a security risk. Under the heightened scrutiny analysis, the Applicant's family history in Afghanistan creates a risk of foreign influence or exploitation. Applicant admits that he may be subject to coercions or pressure under certain circumstances. Other translators or linguists are at risk because of the nature of what they do. That is not the concern. Applicant believes himself to be at risk because of who he is. Applicant has not provided sufficient evidence to mitigate these concerns.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Applicant is commended for the many sacrifices he has made in life, not just for himself, but for his immediate family. He has overcome many obstacles, come to the United States, and become a naturalized United States citizen. His self-determination, hard work, and success are admirable. Despite these things, under the particular facts of this case, the totality of the circumstances set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, or other characteristics indicating that the person may not properly safeguard classified information. The evidence fails to mitigate the negative effects his foreign influence can have on his ability to safeguard classified information.

On balance, it is concluded that the Applicant has not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:	Against the Applicant.
Subpara. 1.a.:	Against the Applicant.
Subpara. 1.b.:	Against the Applicant.
Subpara. 1.c.:	For the Applicant.

## **CONCLUSION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey-Anderson  
Administrative Judge