



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



In the matter of: )  
)  
) ISCR Case No. 12-07673  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

03/21/2013

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated foreign influence security concerns, but he has not mitigated financial considerations concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 20, 2012, the Defense of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and F (financial considerations). The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on September 13, 2012. He did not state whether he wanted a hearing before an administrative judge or the case decided on the written record in lieu of a hearing. On September 20, 2012, Department Counsel requested a hearing on the matter. The case was assigned to me on November 26, 2012. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 29, 2013, scheduling the hearing for February 26, 2013. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on March 5, 2013.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the written request and will not be repeated in this decision.

### **Evidence**

Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through I, which were admitted without objection.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since December 2011. He is applying for a security clearance for the first time. He attended community college for a period, but he did not obtain a degree. He is married with three children under the age of ten.<sup>1</sup>

Applicant was born in Afghanistan to Afghani parents. His grandmother took him and fled to Pakistan in the late 1980s. He remained in Pakistan for several years and then went to a European country, where he was granted asylum and eventually citizenship. He left the European country in the late 1990s to come to the United States and marry his wife. His wife was also born in Afghanistan, but she immigrated to the United States before Applicant. She is now a U.S. citizen. Applicant became a U.S. citizen in 2008. Their children were born in the United States. Applicant's grandmother also lives in the United States.<sup>2</sup>

Applicant's father is deceased. His mother is a citizen and resident of Afghanistan. Applicant's mother remarried, but her second husband is also deceased. Applicant does not have any siblings, but he has a stepbrother and a stepsister. His stepbrother and stepsister are citizens of Afghanistan, but his stepbrother lives in Italy and his stepsister lives in Australia. Applicant is estranged from his mother, and he has

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<sup>1</sup> Tr. at 24-25, 48; GE 1, 2.

<sup>2</sup> Tr. at 44-49; Applicant's response to SOR; GE 1-4.

not seen her in several decades. He has had almost no contact with his mother or his stepsiblings in several years.<sup>3</sup>

Applicant worked as a restaurant server in a hotel from 2003 to 2011. His income increased until he was making about \$80,000 per year. In the early-to-mid 2000s, he entered the real estate market. He bought two houses and “flipped” them earning about \$150,000 on the sales. He bought a third house (House 3) in late 2004 for about \$500,000, intending the house to be his home. The house was financed with a down payment of about \$50,000 and mortgage loans. He lived in the house with his family for about a year. He placed the house on the market, but it did not sell. He bought another house (House 4) in 2006 for about \$600,000 and moved into that house. The house was financed with a down payment of about \$60,000 and mortgage loans. The real estate market collapsed. He was unable to pay the mortgage loans, and he could not sell the houses for what was owed on the mortgage loans.<sup>4</sup>

The holders of the mortgage loans on House 3 agreed to a short sale of the property, which took place in March 2008. The property was sold for \$365,000. The first mortgage loan holder received \$330,095; the second received \$1,000; and the third received \$5,000. House 4 was lost to foreclosure. The house was sold in March 2008 for \$359,100.<sup>5</sup>

Applicant and his family vacationed in Europe for 15 days in 2009 and for 10 days in 2010. He stated that his sister-in-law paid the air fares for the second vacation and he received discounted hotel rates because he worked for a hotel chain. He bought a 2011 minivan in 2011, financed with a loan of about \$36,000. He already owned a 2007 sports utility vehicle (SUV) and two older-model cars that were inoperable or in need of major engine repairs.<sup>6</sup>

Applicant filed Chapter 7 bankruptcy in July 2011. Under Schedule A, Real Property, Applicant listed a timeshare with an estimated value of \$3,500. Under Schedule B, Personal Property, Applicant listed his four vehicles with a total value of \$48,650 and about another \$8,300 in miscellaneous other property. He listed an \$11,950 loan for his 2007 SUV and a \$36,870 loan for his 2011 minivan under Schedule D, Creditors Holding Secured Claims. Under Schedule E, Creditors Holding Unsecured Priority Claims, he listed three unpaid parking fines of \$60, \$100, and \$50. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed 15 debts totaling \$143,134. Included were mortgage loan deficiencies (\$67,175 and \$63,731); credit card debts (\$2,557, \$2,971, and \$2,464); homeowner association dues

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<sup>3</sup> Tr. at 44, 49-53; Applicant’s response to SOR; GE 1, 2.

<sup>4</sup> Tr. at 27-37; GE 1, 4; AE B.

<sup>5</sup> Tr. at 34-37; Applicant’s response to SOR; AE B, D-F.

<sup>6</sup> Tr. at 38-41; GE 1, 3.

(\$290); timeshare maintenance fees (\$30); insurance premium (\$290); check overdraft (\$1,699); and six medical accounts totaling about \$1,925.<sup>7</sup>

As part of the bankruptcy, Applicant surrendered his 2007 SUV. He reaffirmed the car loan on his 2011 minivan. He received financial counseling as a requirement of his bankruptcy. His dischargeable debts were discharged in October 2011. He testified that he paid his parking fines, and that he is current on his car loan and other bills. He did not know whether he still owned the timeshare. He feels that he was victimized by the real estate industry “scam” that preyed on individuals’ wishes to become rich. He stated that he has learned from the experience and his finances are currently in order.<sup>8</sup>

Applicant has been a linguist for a defense contractor since December 2011. He has worked under combat conditions in Afghanistan for more than a year. His performance evaluations are outstanding and the U.S. military personnel he worked with praised his abilities and service to the mission.<sup>9</sup> One U.S. service member wrote:

Despite specific threats against [Applicant’s] life, he continued to perform his duties admirably. [Applicant] was a respected member of the [U.S. military] team, greatly increasing mission effectiveness and earning the respect and confidence of everyone around him. [Applicant] spent hundreds of hours outside the base, and covered hundreds of miles during dismounted patrols. [Applicant’s] performance of his interpreter duties was consistently excellent. In terms of his competency, work ethic, motivation, and physical fitness, he is the best interpreter I have worked with in three deployments.<sup>10</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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

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<sup>7</sup> Tr. at 37; Applicant’s response to SOR; GE 4-6; AE C.

<sup>8</sup> Tr. at 56-62; GE 5; AE G.

<sup>9</sup> AE A, H, I.

<sup>10</sup> AE H.

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 access to classified information will be resolved in favor of national security.”

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.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(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

(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.

Applicant's mother is a citizen and resident of Afghanistan. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Applicant's stepbrother and stepsister are citizens of Afghanistan, but his stepbrother lives in Italy and his stepsister lives in Australia. Applicant does not maintain contact with his stepsiblings. There are no disqualifying conditions raised by the presence of Applicant's estranged stepsiblings in Italy and Australia. SOR ¶¶ 1.b and 1.c are concluded for Applicant.

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 persons, the country in which these 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 U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(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 family ties to Afghanistan. Applicant is estranged from his mother, and he has not seen her in several decades. He is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable

result for an applicant in a Guideline B case.”<sup>11</sup> AG ¶¶ 8(a), 8(b), and 8(c) are applicable.

## **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

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 accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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<sup>11</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

Applicant feels that he is a victim of the real estate industry that preyed on his desire to become rich. He bought and sold two houses, earning about \$150,000 on the sales. Buoyed by that success, he bought a third house for about \$500,000, intending the house to be his home. Not satisfied with that house, about a year later, he placed the house on the market and bought a fourth house for about \$600,000. He bought the fourth house before the third house was sold. The real estate market collapsed; he could not pay the mortgage loans; and he could not sell the properties for what was owed. The mortgage holders agreed to a short sale of the third property, and the fourth property was lost to foreclosure. Despite that problematic financial history, Applicant took his family on European vacations in 2009 and 2010, and he bought a 2011 minivan with a car loan of about \$36,000. Applicant's bankruptcy petition also included three unpaid parking fines of \$60, \$100, and \$50; a check overdraft of \$1,699; and timeshare maintenance fees of \$30. Applicant does not know whether he still owns the timeshare. The collapse of the real estate market was beyond Applicant's control, but it was not completely unforeseeable. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

I find that Applicant has a history of making questionable financial decisions. I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts.<sup>12</sup> His financial issues are recent. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. I find that financial concerns remain despite the presence of some mitigation.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

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<sup>12</sup> The Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).



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(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's character evidence and particularly his outstanding work in Afghanistan under hazardous conditions. However, he has a history of financial problems. His debts were discharged in bankruptcy, but I am not convinced that additional financial problems will not recur.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated foreign influence security concerns, but he has not mitigated financial considerations concerns.

### **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 B:	For Applicant
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraphs 2.a-2.b:	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.

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Edward W. Loughran  
Administrative Judge