



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 12-08220
)
 Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Erica W. Fenstermacher, Esq.

07/23/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence), F (Financial Considerations), and E (Personal Conduct). Security concerns under Guidelines B and F are mitigated, but the concerns under Guideline E are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 14, 2011. On December 6, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B, F, and E. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on January 3, 2014; answered it on March 4, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 25, 2014, and the case was assigned to me on April 29, 2014.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 9, 2014, scheduling the hearing for June 4, 2014. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 14 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until June 18, 2014, to enable Applicant to submit additional documentary evidence. He timely submitted AX F, which was admitted without objection. I granted Applicant's request to extend the deadline for additional evidence until July 14, 2014, and he timely submitted AX G, H, and I, which also were admitted without objection. Department Counsel's comments about AX F through I are attached to the record as Hearing Exhibit (HX) II. (HX I is discussed below.) DOHA received the transcript (Tr.) on June 12, 2014.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Afghanistan. The request and supporting documents are attached to the record as Hearing Exhibit (HX) I. I took administrative notice as requested. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted ¶¶ 1.a and 2.a. He denied ¶ 3.a-3.d. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 46-year-old linguist employed by a defense contractor. While waiting for a decision on his security clearance application, he is supporting himself by working as a chauffeur for a limousine company. (Tr. 31.) He has never held a security clearance. (Tr. 7, 72.)

Applicant was born in Afghanistan. He attended school in Afghanistan from about 1974 to 1982. When Applicant was 14 years old, his parents fled from Afghanistan to avoid arrest for not joining the Communist Party. Applicant stayed in Afghanistan and lived with a sister while he attended school.

Applicant's native language is Pashto. He also speaks Dari, Urdu, and Hindi. He took an English course in high school, but he did not learn to speak English until he came to the United States. (Tr. 32-35.)

From 1980 to 1982, one of Applicant's brothers lived as a refugee in Pakistan. In his answer to the SOR, Applicant stated that, in order to live legally in Pakistan, his brother was required to obtain an identification card from one of several political parties. His brother obtained an identification card from Hizb-i-Gulbuddin¹ (HIG), but he kept the card only for about a week until he obtained another identification card from another political party, Jamaat-e-Islami. Applicant stated that he was unaware of his brother's

¹ This organization's name is also spelled Hezb-e Islami Gulbuddin. See GX 13 and GX 14.

connection to HIG until his brother told him about it ten years later. Applicant considered the information "remote and inconsequential," and he did not remember his brother's disclosure when he completed a security questionnaire in February 2011. (Answer to SOR at 8-10.)

In August 1988, Applicant married a native of Pakistan who was a naturalized U.S. citizen, and he came to the United States in December 1989 on a spousal visa. (GX 2 at 5; GX 5 at 1, 3.) He became a U.S. citizen in August 1994. He and his wife divorced in February 1998. (GX 9 at 18.) His ex-wife is now a citizen and resident of the United States. They had a son in Pakistan, who died shortly after his birth.

Applicant married a citizen of Paraguay in July 2000, and they divorced in February 2006. No children were born during this marriage. Applicant started living with his current wife, a citizen of Brazil, in 2004, and they married in April 2006. They have an eight-year-old daughter, who is a native-born citizen and resident of the United States. (GX 1 at 19; GX 2 at 4.) His current wife has been employed as a part-time adjunct professor at a U.S. university since January 2010. She earned about \$10,000 during her first year and is now earning about \$19,000 per year. She has applied for a full-time position at the university.

Applicant's father passed away in 2007 and his mother passed away in 2008. (GX 2 at 6.) He has two brothers, three sisters, and one nephew who are citizens of and residents of Afghanistan. He has another nephew who is a citizen of Afghanistan and resident of Norway. Before his parents passed away, he had monthly contact with his family and he visited Afghanistan every two years. He now has telephonic contact with his siblings about twice a year. (GX 2 at 7-10.) He has virtually no contact with his nephew. (Answer to SOR at 3; Tr. 53.) None of his siblings have any involvement in the government or politics. Applicant's family members tell their friends and neighbors that Applicant lives in Pakistan. Even some of his relatives believe that he lives in Pakistan. (Tr. 46.)

Applicant worked for a local utility company from about 1997 to December 2008, when he fell backwards into a hole while operating a jackhammer and injured his back. His medical records reflect that he suffered a thoracic compression fracture at the T7 level, resulting in acute pain and muscle spasms. He underwent vertebroplasty, a procedure in which bone cement is injected into cracked or broken vertebrae to stabilize the injury. He was treated with medications, underwent supervised physical therapy until October 2010, and was provided with instructions for home therapy after October 2010. He was unable to work until December 2009, when he was cleared for sedentary work, with no prolonged sitting or standing and no heavy lifting. (GX 2 at 3; AX G; AX H; AX I.) He was kept on the rolls as an employee in a no-pay status until 2011. (Tr. 34-36.)

During a personal subject interview (PSI) in March 2011 and at the hearing, Applicant testified that he earned about \$80,000 to \$86,000 per year while employed by the utility company. During 2009, he received workmen's compensation totaling about \$33,000. He was awarded about \$17,000 for his disability. (GX 2 at 3; Tr. 37.) He did

not provide any documentary evidence of his income, but his testimony regarding his income was not challenged by Department Counsel.

On June 1, 2007, before Applicant was injured, he submitted an SCA, seeking work as a linguist. During a follow-up interview on June 5, 2007, he disclosed that he was “taken to the Afghan military by force” when he was 14 years old, and that he fled from the military after about two months and went to Pakistan. (GX 10 at 1, 5.) He also disclosed that he attended a military academy run by Jamaat-e-Islami in Pakistan from February 1987 to August 1988. The written summary of the interview states that Applicant attended basic training, was trained to defuse mines, attained the rank of sergeant, and received an honorable discharge. (GX 10 at 5.)

As part of the follow-up questioning, Applicant completed a counterintelligence (CI) questionnaire that asked if he, a close relative, or an associate had ever been a member, supporter, or representative of any of the organizations listed on the questionnaire. He answered “Yes” to the question about the Afghanistan Army, listed his membership in “Afghan military 1982,” and disclosed his attendance at the military academy operated by Jamaat-e-Islami. Jamaat-e-Islami was not one of the organizations listed in the CI questionnaire. He disclosed his brother’s membership in HIG from about 1984 to 1986. He stated that neither he nor any relatives or associates were involved with Hizb-i-Wahdat,² which was listed on the questionnaire. (GX 14.) He then revised his answers to the questionnaire and disclosed his brother’s employment as a security guard for Jamaat-e-Islami from 1987 to 1989, and his brother’s membership in Hizb-i-Wahdat. (GX 13.)

Applicant met and married his first wife while in Pakistan in 1988. The summary of the June 2007 follow-up interview does not reflect what questions the screening interviewer asked Applicant about his activities and his ex-wife’s activities with Jamaat-e-Islami, but the interviewer concluded that Applicant was evasive and withheld information when asked about his and his wife’s activities with that organization. (GX 10 at 15.) Applicant did not receive a clearance. (Tr. 7, 72.)³

On February 14, 2011, Applicant submitted his most recent SCA. He answered “No” to the question asking whether he had ever served in a foreign military service. (GX 1 at 14.) On February 24, 2011, he filled out a CI questionnaire asking whether he, a relative, or an associate had ever been a member, supporter, or representative of any organizations listed on the form, he answered “No” to the questions about membership in the Afghan National Army or Afghan National Police, HIG, and Hizb-i-Wahdat. (GX 8 at 1.) He disclosed his membership in Jamaat-e-Islami. (GX 8 at 3.) According to a written summary of a follow-up interview on the same day, he disclosed that in June 1982, when he was 14 years old, he was conscripted into the Afghan Army, attended

² This organization’s name is also spelled Hezb-e Wahdat. See GX 13 and 14.

³ On his most recent SCA, Applicant stated that he received a security clearance in June 2007. (GX 1 at 32.) However, his attorney stated and he testified at the hearing that he has never held a security clearance.

basic training, and fled to Pakistan in August 1982. (GX 5 at 5.) He disclosed that he had been a member of Jamaat-e-Islami, but he stated that he did not know if his brother also was a member. (GX 5 at 9.) He also disclosed that he voluntarily attended a school operated by Jamaat-e-Islami, and that it was similar to a middle school, with no specific military duties. (GX 5 at 5.) He did not refer to the school as a military academy, as he had done on in his follow-up security interview in June 2007.

During a personal subject interview (PSI) on March 4, 2011, Applicant was asked if he was hiding any criminal or illegal activity by him or his ex-wife. He denied any criminal or illegal activity and denied associating with anyone involved in criminal or illegal activity. Applicant was asked if his brother was a member of HIG or Hizb-i-Wahdat. He denied that his brother was a member of those organizations and denied that he knows anyone in a terrorist group or organization. (GX 2 at 16.)

During the March 2011 PSI, Applicant told the investigator that he attended a military academy in Pakistan, where they had a few military classes, as well as classes in mathematics and science. He told the investigator that he received a diploma from the military academy. (GX 2 at 3.)

In his answer to the SOR and at the hearing, Applicant stated that he initially did not remember his brother's mention of the HIG identification card. He stated that his memory of the HIG identification card was jogged by the extensive questioning, and he volunteered the information about his brother's brief possession of the HIG card. (Tr. 68, 71-72.) The documentary records of his CI interview in February 2011 and the March 2011 PSI to not reflect any disclosure of his brother's possession of the HIG identification card.

At the hearing, Applicant testified that he was arrested in 1982 and interrogated about the whereabouts of his parents. According to Applicant, he was taken before a judge, who decided that he should be "registered" in the Army. (Tr. 54-58.) He was issued a uniform and received some military training, but he was not allowed to receive weapons training. After about two months, he and several conscripts, who were older than he was, ran away and made their way to Pakistan. (Tr. 59-60.) He also testified that members of the Afghan Army could not enlist until they were 21 years old, and he did not believe that he was actually "serving" in the Army because it was "forced" and he was only 14 years old. (Tr. 62.)

During 2010 and 2011, Applicant obtained a series of short-term jobs with a defense contractor as a language teacher, and he earned about \$35,000 to \$36,000 per year. (Tr. 43.) One of his former students, an Air Force lieutenant colonel, described him as "an inspirational leader," with a "love for the profession, for America, and a sincere concern for his students." (AX B.)

From March 2011 to March 2012, Applicant worked as a contract interpreter for special operations units in Afghanistan, and he earned about \$185,000. (Tr. 31-32.) He was highly recommended for greater responsibility by his military supervisor. (AX A.) He

was unemployed from March to May 2012. He obtained a 45-day contract in May 2012, and he received a certificate of appreciation from the Special Forces soldiers who were his students. (AX E.) He was then unemployed until November 2012. He was an instructor for military advisors from January 22 to March 14, 2013; and from April 22 to June 14, 2013. (AX C and D.)

Applicant and his current wife purchased a home in 2006, borrowing \$442,000 with a first mortgage loan of \$350,000 and a second mortgage loan of \$92,000. After Applicant was injured, they were no longer able to make the payments on the two loans. They obtained the assistance of a non-profit home ownership advocacy association and were in the process of negotiating a modification of the first mortgage when both loans were sold to another lender. The new lender informed them that they needed to show proof of stable employment and a steady income before negotiating a loan modification. (Tr. 39-44.) Applicant's last discussions with the new lender were about two or three months before the hearing. (Tr. 81-82.)

Applicant has not made any payments on his mortgage loans since he began negotiating a loan modification. (Tr. 78.) His credit reports reflect past due payments on the first mortgage loan totaling about \$79,579. There is no indication in the record that the mortgage loans have been referred for collection or that foreclosure has been initiated. (GX 3 at 3; GX 4 at 2.)

Applicant has savings of around \$2,000 or \$3,000. He and his wife own a time share worth \$40,000-45,000. (GX 2 at 15.) His credit report reflects that he borrowed about \$24,759 to purchase the time share, the balance on the loan is about \$15,810, and the account is current. (GX 4 at 2.) Although Applicant had two medical debts for \$674 and \$71 referred for collection, they have been paid. He currently has no delinquent debts other than the mortgage loans for on his primary residence. (GX 3; GX 4.)

I have taken administrative notice that Afghanistan has been an independent nation since 1919, and it was a monarchy until a military coup in 1973. Following a second military coup in 1978, a Marxist government emerged. In December 1979, the Soviet Union invaded and occupied Afghanistan, but they were resisted by the Afghan mujahedeen. The Soviet Union withdrew in February 1989 pursuant to an agreement signed by Pakistan, Afghanistan, the United States, and the Soviet Union. The mujahedeen were not a party to the agreement and refused to abide by it. The result was a civil war among several factions, including the Taliban. By the end of 1998, the Taliban controlled most of Afghanistan, committed atrocities against minority populations, and provided sanctuary to terrorist organizations. U.S. military forces, along with forces from a coalition partnership, forced the Taliban out of power by November 2001. With the assistance and support of the United States, a new democratic government took office in 2004.

Afghanistan's central government is improving its ability to provide constitutional, stable, effective, and responsive governance. However, local governance is weak, and all levels of government are plagued by corruption.

I also have noted that Afghanistan's human rights record is generally poor, due to the continuing insurgency, the weak government, and ongoing recovery efforts from two decades of war. In spite of efforts by the U.S. and the government of Afghanistan, it continues to be a violent, unsafe, unstable country. The weak government and internal instability have enabled hostile states, non-state actors, terrorists, and insurgents to continue operating in Afghanistan, including groups hostile to the United States. Insurgents use narcotics trafficking and kidnapping to finance their military and technical capabilities. Two organizations relevant to this case have a history of hostility to the United States: HIG has had long-established ties with Osama Bin Laden; and Jamaat-e-Islami has been involved in political violence against the United States in Pakistan. HIG received extensive U.S. support against the Communist government in Afghanistan, but it turned against its mujahedin colleagues after the Communist government fell in 1992. Although HIG continues its involvement in terrorism, it is widely considered to be amenable to reconciliation with the government of Afghanistan.

Suicide bombing attacks in Afghanistan continue to inflict large numbers of casualties. Helmand, Kandahar, Ghazni, and Kunar provinces are among the most dangerous provinces for Afghan security personnel and International Security Assistance Force (ISAF) personnel. Furthermore, the area in and around Kabul remains at high risk of militant attacks, despite extensive security operations by Afghan and coalition forces. "Insider attacks" on ISAF personnel by members of Afghan forces or infiltrators into Afghan units are a serious concern, but they have declined since 2012, as a result of Afghanistan's increased focus on the vetting and training of security force personnel.

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” See 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*, 484 U.S. at 531. “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. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant has two brothers, three sisters, and “at least one nephew” who are citizens and residents of Afghanistan (SOR ¶1.a). The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant to this case:

AG ¶ 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

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

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

Guideline B is not limited to countries hostile to the United States. "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).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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. 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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Afghanistan is an ally of the United States. However, the activity of terrorists and insurgents in Afghanistan who are hostile to the United States establishes the "heightened risk" in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b).

Three mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 8(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; and

AG ¶ 8(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.

AG ¶ 8(a) is not established. The weak government, continuing insurgency, internal instability, and activities of insurgents and terrorists hostile to the United States preclude a finding that Applicant is not likely to be confronted with a choice between the interests of his siblings and the interests of the United States.

AG ¶ 8(b) is established. While Applicant still has feelings of obligation and affection for his siblings, he has become more distant from them since the deaths of their parents. Nevertheless, his sense of loyalty or obligation to his siblings is not minimal. However, I am satisfied that his deep and longstanding relationships and loyalties in the United States would cause him to resolve any conflict of interest in favor of the United States. He has lived in the United States since December 1989 and has been a U.S. citizen for 20 years. His ex-wife and his daughter are U.S. citizens. He owns a home in the United States. He served with U.S. special operations units under

combat conditions in Afghanistan for a year and earned the respect of his military supervisor, who recommended him for positions of greater responsibility. He has been recognized for his dedication and skill as an instructor in DOD language training courses. An Air Force lieutenant colonel regarded him as “an inspirational leader.” Recently, he has been offered employment as a linguist in Afghanistan, conditioned upon receipt of a security clearance.

AG ¶ 8(c) is established for Applicant’s nephew in Afghanistan, but it is not established for his siblings. The presumption that contacts with immediate family members are not casual does not apply to Applicant’s nephew, but it applies to his siblings. Although Applicant’s contacts with his siblings have become less frequent since the passing of his parents, he has not rebutted the presumption that his contacts are not casual.

Guideline F, Financial Considerations

The SOR alleges that Applicant has a mortgage loan that is 120 days or more past due in an amount of about \$79,759, with an approximate loan balance of \$390,000 (SOR ¶ 2.a). The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s admissions regarding his home mortgage loans, corroborated by his credit bureau reports, are sufficient to establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The following mitigating conditions are potentially applicable:

AG ¶ 20(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; and

AG ¶ 20(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.

AG ¶ 20(a) is partially established. The delinquent mortgage payments are ongoing. Although only a single debt is involved, Applicant has missed multiple payments. However, his financial problems were the result of his work-related injury. He is no longer involved with hard manual labor, and his freak accident and disabling injury while performing heavy manual labor was an unusual circumstance that is unlikely to recur.

AG ¶ 20(b) is established. Applicant's injury and loss of employment were circumstances beyond his control. He acted responsibly by obtaining assistance from a non-profit home ownership advocacy association, attempting to negotiate a loan modification, and staying in contact with his creditors. His efforts to obtain a loan modification were thwarted by the sale of his first mortgage to another bank and his lack of steady employment. He has recently contacted the new holder of his mortgage loan. He is current on his other financial obligations.

Guideline E, Personal Conduct

The SOR alleges that, in February 2011, Applicant deliberately failed to disclose on a security questionnaire that his brother was a member of HIG and Hizb-i-Wahdat (SOR ¶ 3.a) and that he failed to disclose that he was a member of the Afghan National Army in 1982 (SOR ¶ 3.b). It also alleges that he falsified his February 2011 e-QIP by failing to disclose that he served in the Afghan military in 1982 (SOR ¶ 3.c). Finally, it alleges that he falsely stated several times to a DOD investigator in March 2011 that he had never been in a foreign military service (SOR 3.d).

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying conditions in this case are:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security

clearance eligibility or trustworthiness, or award fiduciary responsibilities;
and

AG ¶ 16(b): deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant's brother's association with HIG began when Applicant was 10 to 12 years old and living in Afghanistan, separated from his parents and other siblings, who were refugees in Pakistan. His brother's disclosure of his HIG involvement occurred during the early 1990s, before Applicant was a citizen and not involved in the security clearance process. These circumstances tend to support Applicant's claim that the his brother's possession of a HIG identity card for one week was remote and inconsequential, and that he forgot about it until he was questioned extensively about his and his brother's memberships in organizations hostile to the United States. The fact that he disclosed his brother's membership in HIG during the CI screening in June 2007 can be interpreted as showing an absence of intent to conceal the information.

However, the credibility of Applicant's claim is undercut by his conflicting accounts of his brother's involvement in HIG. After disclosing his brother's HIG connection in June 2007, his application for a clearance was denied. When he applied for a clearance again in February 2011, he falsely represented that he received a clearance in June 2007.⁴ During the CI screening in February 2011 and his PSI in March 2011, he denied that his brother was involved with HIG. In his answer to the SOR and at the hearing, he claimed to have corrected his denials of his brother's HIG involvement. However, neither the written report from the June 2007 CI screening nor the March 2011 PSI reflects any effort to modify his denials. His inconsistent statements indicate that he believed his inability to obtain a clearance was due, at least in part, to his brother's involvement with HIG, and his belief motivated him to conceal his brother's HIG connection when he tried again to obtain a clearance. Thus, I conclude that AG ¶¶

⁴ Falsification of this entry in his February 2011 SCA was not alleged in the SOR. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered his false representation that he had previously received a security clearance for these limited purposes.

16(a) and 16(b) are established, based on his failure to disclose his brother's connection to HIG and Hizb-i-Wahdat.

On the other hand, Applicant's explanation for denying that he served in the Afghan Army is more plausible and credible. His description of his arrest and subsequent military training indicate that they were more akin to military detention than military service. He was only 14 years old, and he was not permitted to handle a weapon. He disclosed his involvement with the Afghan Army during his CI screening in June 2007 and again in February 2011. Thus, I conclude that no disqualifying conditions are established regarding Applicant's involvement with the Afghan Army.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) is not established. Applicant's claim that he told the investigator about his brother's one-week possession of a HIG identity card is not supported by the written records of his February 2011 CI screening or the March 2011 PSI. Furthermore, Applicant's explanation extends only to his brother's brief possession of a HIG identity card in 1982, and it does not explain his failure to disclose his brother's HIG membership from 1984 to 1986.

AG ¶ 17(b) is not established. Applicant's attempted concealment of his brother's HIG involvement was not minor, because it undermined the integrity of the security clearance process and it involved his brother's membership in an organization hostile to the United States. It was not infrequent, because it was repeated several times. It did not occur under unique circumstances.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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 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 Guidelines B, F, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature adult with strong connections to the United States. Although English is not his first language, he understood the questions of counsel at the hearing and expressed himself clearly at the hearing. He supported U.S. soldiers deployed in a combat zone. He earned the respect of his supervisor in Afghanistan and the students he taught in Pashto language classes. Nevertheless, his inconsistent statements about his brother's involvement with HIG leave me with doubts about his candor during the security clearance process.

After weighing the disqualifying and mitigating conditions under Guidelines B, F, and E, evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has mitigated the security concerns under Guidelines B and F, but he has not mitigated the security concerns under Guideline E. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph e, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraphs 3.b-3.d:	For Applicant

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge