



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 12-09359

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

04/23/2013

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

In a Statement of Reasons (SOR) dated November 14, 2012, the Department of Defense (DOD) enumerated security concerns arising under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) regarding Applicant's finances and family living abroad. The action was taken 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 the DOD on September 1, 2006.

On December 8, 2012, Applicant responded to the SOR. He admitted eight allegations and denied one allegation under Guideline F, admitted half of the four allegations raised under Guideline B, and requested a decision without a hearing. On February 28, 2013, Department Counsel submitted a File of Relevant Material (FORM), which included 15 attached items. Applicant timely responded in a letter dated March 19, 2013. The case was assigned to me on April 4, 2013. Based on a review of the case file, I find Applicant failed to meet his burden regarding the security concerns raised in the SOR. Security clearance is denied.

## Findings of Fact

Applicant is a 47-year-old linguist employed by a defense contractor. He was granted political asylum to enter the United States in 2001 after receiving death threats from the Taliban because of his promotion of human rights and his relation to a former member of the government. He became a naturalized U.S. citizen in 2008. For many years he worked as a taxicab driver, before he considered a career as a linguist. Applicant is very patriotic and highly supportive of the United States. He has worked with the U.S. military as a specialist on Afghanistan since early 2012. Applicant is single and has no children. He completed a security clearance application (SCA) on April 12, 2012. An SOR was issued in response to certain facts in the SCA that raised security concerns. Those facts concerned several delinquent debts and foreign contacts.

The Government's evidence indicates that Applicant has eight delinquent debts, amounting to at least \$8,000, and alleges that he continues "to gamble and incur gambling debt, although [he does] not have the funds to pay off [his] existing credit debts."<sup>1</sup> In his response to the SOR, Applicant admitted the debts at issue and included comments such as "I have a plan to pay off the balance" and "I will pay very soon." In his handwritten, March 19, 2013, response to the FORM, Applicant listed eight accounts, wrote that the accounts were paid on March 18, 2013, and indicated contact information with the various account holders (i.e. name and phone number of a merchant representative).<sup>2</sup> No substantiating evidence of payment was submitted. Applicant explained that he got behind on his bills because he has been busy with his work. Some of the debts at issue have been delinquent since the 2008-2011 time period.<sup>3</sup> He has a net monthly remainder of about \$175. In his SOR response to the allegation stating he continues to gamble and incur gambling debt," Applicant wrote only "I deny. No gambling."

In his April 2012 SCA, Applicant certified that he has never been married and that he does not reside with a cohabitant. In denying an allegation that "his wife's siblings are citizens and residents of Afghanistan," Applicant wrote in his December 2012 response to the SOR that he denied the allegation, noting that he is single. (SOR allegation 2.c).<sup>4</sup>

---

<sup>1</sup> The sum noted includes the past-due balances for the accounts set forth in the SOR only; it does not include the total balance owed on the accounts. In total sum, the amount is closer to \$15,535.

<sup>2</sup> Most of the accounts at issue in the SOR have the same names as the accounts noted by Applicant, and the connection is apparent. The nexus between those accounts noted at SOR 1.d, 1.e, and 1.h and those mentioned in Applicant's letter are less easily connected.

<sup>3</sup> Ex. 6 (Credit report).

<sup>4</sup> The Government conceded that the allegation was meant to reference Applicant's sister's husbands, not Applicant's spouse. In the absence of objection by Applicant, the 1.c. allegation is amended to reference Applicant's brothers-in-law. See FORM at 11.

Applicant denied that he has a brother who is a citizen and resident of Afghanistan (SOR allegation 2.a). He explained that he has brothers who were born in Afghanistan, as reflected in the SCA. Today, however, three of his four brothers are citizens of Germany, while the fourth is a citizen in Canada. There is scant additional information about these siblings.

Applicant has two sisters who are residents and citizens of Afghanistan. They are housewives who are both supportive of Coalition forces presently in that country. They find the presence has made their daily lives safer. Their neighborhood is described as safe and commercial, with most locals in work related to the Afghan government or the Coalition force. Both sisters are educated and grateful for their current freedoms. Their husbands are engineers with master's degrees who are "free minded and Democrat people." They hope to someday send their children to the United States. Applicant speaks with his sisters by telephone weekly, and with his brothers-in-law once or twice a month. Applicant provides his sisters with about \$150 a month. There is scant additional information about these relations, e.g., there is no clear information as to the extent of their relationship with Applicant or their contact.

The Government requested I take administrative notice of certain facts regarding the Islamic Republic of Afghanistan.<sup>5</sup> Applicant did not object to this request. On May 2, 2012, the United States and Afghanistan signed an agreement constituting a ten-year partnership that demonstrates the United States' enduring commitment to strengthen Afghanistan's sovereignty, stability, and prosperity as it continues to cooperate to defeat al-Qaida and its affiliates. That partnership is consistent with the United States' commitment to Afghanistan, past and present. Despite this agreement and the current coalition forces present in that country, helping to maintain security and stability, violence continues in almost all parts of the country. Significant human rights violations continue in that country. While the Taliban-led insurgency in Afghanistan has lost ground in some areas, it remains resilient and capable of challenging U.S. and international goals. The Department of State warns U.S. citizens against travel to Afghanistan, noting that the security threat remains critical.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a scrutiny of a number of variables known as the whole-person concept. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

---

<sup>5</sup> FORM, Item 15.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant’s responsibility to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>6</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>7</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>8</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>9</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>10</sup> A security clearance denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

### **Guideline F – Financial Considerations**

Under Guideline F, failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

---

<sup>6</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>7</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>8</sup> See also EO 12968, § 3.1(b) and EO 10865 § 7.

<sup>9</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>10</sup> *Id.*

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.<sup>11</sup> The burden in these proceedings is placed squarely on an applicant. Here, Applicant admitted responsibility for a sum of at least \$8,000 in delinquent debt. That overall debt includes individual account obligations dating back several years. Consequently, Financial Considerations Disqualifying Conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. With such conditions raised, it is left to Applicant to mitigate security concerns.

Little is known about the debts at issue. For example, there is no evidence explaining how or why these debts were accrued – whether from gambling, medical emergencies, or any other specific reason – or the reasons they became delinquent. Moreover, while Applicant wrote that he paid off all of his debts on the day before his response to the FORM, he provided no documentary evidence substantiating that claim. Appellant also provided no evidence showing he received financial counseling that has resulted in progress on his debts. While there is no reason to question his veracity with regard to his handwritten notes regarding his debts, the burden is on an applicant to provide evidence in mitigation; the burden is not on this process to initiate contact with an applicant's creditors and confirm debt status directly. Without corroborating evidence that these debts have been paid, Applicant's affirmations must be viewed as unsubstantiated. In light of the scant evidence provided, none of the mitigating conditions at AG ¶ 20 apply.

## **Guideline B – Foreign Influence**

The concern under Guideline B is that 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. Consideration should be given to 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are discussed in the conclusions below.

Applicant's relatives of issue are his sisters and brothers-in-law, who are citizens and residents of Afghanistan, and his brothers. The presence of al-Quaida and the Taliban in Afghanistan warrant heightened scrutiny in the examination of those family members residing in that country. Under these facts, Foreign Influence Disqualifying Conditions 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 exploitation, inducement, manipulation,*

---

<sup>11</sup> AG ¶ 18.

*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) apply. With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns*

In declining an administrative hearing and relying on the administrative record, Applicant's case rests on limited facts. Applicant provided information about his sisters' neighborhoods, the professions of his siblings, and the frequency of their telephonic conversation, but gave scant information as to how close he is to his sisters and in-laws. Meanwhile, Applicant provided few facts about himself. Consequently, there are insufficient facts available to properly analyze whether Foreign Influence Mitigating Conditions such as 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.*) or 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 there is no conflict of interest, either because the individual's sense of loyalty to or obligation 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*). Further, while ¶ 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*) may seem applicable, Applicant's information only shows that his communication with his siblings and in-laws is infrequent. Infrequent, however, does not necessarily mean casual.

### **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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. In choosing a decision without a hearing, however, there are scant facts of record. It is noted that Applicant is in his 40s. He received immunity to enter the United States because of steadfast hopes for a freer Afghanistan, hopes shared by the United States. Once in the United States, he worked as a taxi driver before sharing his unique cultural and linguistic expertise with the defense industry.

There is nothing to suggest Applicant is not loyal to the United States, nor is there anything intimating he or his family are necessarily at risk at this moment. In foregoing a live hearing, however, Applicant's burden must be judged solely on his submissions. Here, those submissions were deficient. Consequently, security concerns remain under both guidelines. In so concluding, I further note that the denial of a security clearance does not indicate that an applicant is disloyal or of poor character. It merely means that he failed to provide information sufficient to mitigate the security concerns raised. Clearance is denied.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraphs 2.c-2.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge