



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-09685
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

01/25/2013

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant's Afghani relatives who are alleged to create security concerns are all either deceased or residents of the United States. Applicant was the victim of identity theft and he has mitigated the alleged financial consideration security concern. Clearance is granted.

On August 21, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges security concerns under Guidelines B (foreign influence) and F (financial considerations). On September 4, 2012, Applicant submitted a response to the SOR in which he admitted SOR allegations 1.c, 1.d, and 1.e. He denied all other allegations and he requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on November 2,

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<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

2012, that was mailed to Applicant on November 5, 2012. Applicant was informed he had 30 days from receipt of the FORM to submit his objections to any information contained in the FORM or to submit any additional information he wished to be considered. Applicant acknowledged receipt of the FORM on December 1, 2012, but did not submit a response to the FORM or object to anything contained in the FORM within the time allowed him. The case was assigned to me on January 11, 2013.

### **Procedural Matters**

The record establishes that Applicant's mother, father, and father-in-law, as alleged in SOR subparagraphs 1.a, 1.b, and 1. e died years before the SOR was issued. Department Counsel withdrew those allegations in the FORM.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 43 years old and has been employed as a linguist by a defense contractor since January 2012. He serves with U. S. military forces in Afghanistan. He was employed full time as a department store salesman from October 2011 until January 2012; and part time as a driving instructor from November 2011 until January 2012. Applicant was self-employed as a part-time taxi driver from October 2008 until September 2011. He reported he was unemployed from January 2005 until September 2008. During those years, Applicant was attending schools to obtain a high school diploma and a certificate. He also attended a college from which he did not receive a degree. Applicant worked as a cook in a diner from January 1998 until December 2004.

Applicant married his wife in Pakistan in August 1999. They have four children, ages 10, 9, 6, and 1. Applicant's wife was a citizen of Afghanistan and resident of the United States at the time he submitted his response to the SOR. Applicant indicated in his response to the SOR that his wife was to receive a Certificate of Naturalization 30 days thereafter. Applicant entered the United States in July 1988, and he became a naturalized U. S. citizen in February 2002. His children are all citizens and residents of the United States.

Applicant's two brothers are citizens of Afghanistan and residents of the United States. They entered the United States in 1988, and have not left the United States since immigrating to it. Applicant's mother-in-law is a citizen of Afghanistan and a resident of the United States. She immigrated to the United States in 2002, and she has not left the United States since she arrived there.

SOR subparagraph 1.g alleges that Applicant's sister-in-law is a citizen and resident of Afghanistan. In his response to the SOR, Applicant denies this allegation and asserts his sister-in-law is a citizen of Afghanistan but a resident of the United States. In support of the allegation, Department Counsel cited to Applicant's response to the SOR (mis-cited as Exhibit 4) and Exhibit 5. However, in his response to the SOR Applicant specifically denied

this allegation. Exhibit 5, a list of Applicant's relatives, lists one sister-in-law and identifies her as a permanent resident of the United States.

SOR subparagraphs 2.a, 2.b, and 2.c allege three debts that have either been charged off as bad debts or submitted for collection. Applicant asserted each of these debts do not belong to him but were the result of identity theft. His credit reports verify that he disputed the debts alleged in subparagraphs 2.a and 2.b. The file also contains letters that establish each of the three debts were directed to be removed from his credit report in response to information supplied to the creditors by Applicant. Additionally, the file contains two letters from creditors not alleged in the SOR which specifically acknowledge that Applicant was the victim of credit fraud.

SOR subparagraph 2.f alleges an automobile loan as having been charged off in the approximate amount of \$31,131. In his response to the SOR, Applicant denies the allegation and asserts the vehicle was sold to a third party and the loan was assumed by the third party with the creditor's approval. To prove the allegation, Department Counsel cites to Applicant's response to the SOR and two credit reports. Both credit reports state: "Account assumed by another party." There is no evidence to suggest the account was ever charged off as a bad debt.

SOR subparagraph 2.d and 2.e allege two automobile loans, owed in the combined amount of \$9,696, that were charged off as bad debts following repossessions. Applicant's credit reports list both accounts as having been charged off with the last activity dates occurring in 2009. Applicant's credit report, dated February 3, 2012, contains the notation "dispute following resolution" for the account alleged in subparagraph 2.d, and "there may be balance due" for the account alleged in subparagraph 2.e. Applicant denied each allegation and asserted the accounts were a mistake due to an overcharge, and were currently under dispute. He also claimed each account should be resolved in his favor in the near future.

## **Policies**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guidelines B (foreign influence) and F (financial considerations), with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an

applicant.<sup>2</sup> The Government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>4</sup> although the Government is required to present substantial evidence to meet its burden of proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</sup> Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>11</sup>

## Analysis

### Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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 SOR listed three of Applicant’s relatives who had been dead for years before the SOR was issued. Department Counsel prudently withdrew those three allegations. Of the remaining allegations, only one alleged a relative who was believed to be a resident of

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<sup>2</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>3</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>4</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>7</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>8</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id.* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

Afghanistan. However, nothing in the record supports that allegation. Instead, the evidence establishes that each alleged relative who is still alive resides in the United States. There is no evidence to indicate any of Applicant's relatives have any continuing contact with anyone in Afghanistan, or that they have returned to Afghanistan, or that they have even left the United States since they immigrated to the United States. No Guideline B disqualifying condition applies.

## **Guideline F, Financial Considerations**

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 record contains proof that Applicant was the victim of credit fraud. He disputed the accounts listed in SOR subparagraphs 2.a, 2.b, and 2.c, and, in response to those disputes, the creditors directed the accounts be deleted from his credit reports. There is no evidence to support the allegation contained in SOR subparagraph 2.f.

The record establishes the accounts listed in SOR subparagraphs 2.d and 2.e were charged off in the combined amount of \$9,696. Disqualifying Condition (DC) 19(a): *inability or unwillingness to satisfy debts* applies.

Applicant somewhat unclearly states the accounts alleged in subparagraphs 2.d and 2.e were mistakes due to overcharges, and that he was disputing them. He also claimed each account should be resolved in his favor in the near future. Applicant's credit report, dated February 3, 2012, contains the notation "dispute following resolution" for the account alleged in subparagraph 2.d, and "there may be balance due" for the account alleged in subparagraph 2.e. Considering the proof he submitted that he was the victim of identity theft, that he had been successful in disputing a number of other accounts, and the uncertain entries in his credit report, he likely has, or reasonably believes he has, a legitimate basis to dispute the accounts listed in subparagraphs 2.d and 2.e, and they will be removed from his credit reports in short order.

The accounts alleged in subparagraphs 2.d and 2.e both arose following a lengthy period of unemployment experienced by Applicant that was then followed by his part-time employment as a taxi driver. Further, the total amount alleged as owing on those two accounts is not an amount that is likely to prompt Applicant to engage in illegal acts to raise funds to satisfy those accounts. Mitigating Conditions (MC) 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*; MC 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*; and MC 20(e): *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides*

*documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue apply.*

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant mitigated the foreign influence and financial considerations security concerns. He overcame the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guidelines B and F are decided for Applicant.

### **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-g:	For Applicant
Paragraph 2, Guideline F:	For APPLICANT
Subparagraphs 2.a-f:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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Henry Lazzaro  
Administrative Judge

