



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



In the matter of:)
)
-----) ISCR Case No. 12-10862
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

04/10/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On June 26, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ The Department of Defense (DOD) issued a Statement of Reasons (SOR) to her on September 28, 2012, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR

¹ GE1 ((SF 86), dated June 26, 2012).

alleged security concerns under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The DOD adjudicators recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR. In a sworn statement, dated December 12, 2012, Applicant responded to the SOR allegations and initially requested a decision on the record in lieu of an in-person hearing because she was in Afghanistan. She subsequently changed her mind and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed February 22, 2013. The case was assigned to me on February 26, 2013. A Notice of Hearing was issued on February 27, 2013, and I convened the hearing as scheduled, by video teleconference, on March 18, 2013.

During the hearing, nine Government exhibits (GE 1 through GE 9) and five Applicant exhibits (AE A through AE E) were admitted into evidence without objection. The transcript (Tr.) was received on March 26, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and she submitted 14 additional documents which were marked as exhibits (AE F through AE S) and admitted into evidence without objection. The record was closed on April 8, 2013.

Rulings on Procedure

At the commencement of the hearing, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Islamic Republic of Afghanistan (Afghanistan), appearing in nine U.S. Government publications. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Afghanistan in publications of the U.S. Department of State,² the Director of National Intelligence,³ and the Chairman of the Joint Chiefs of Staff.⁴

² U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Afghanistan*, dated February 7, 2012; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2011 Human Rights Report: Afghanistan*, dated May 24, 2012; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2011*, dated July 31, 2012; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Afghanistan*, dated June 27, 2012; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2011, Chapter 5: Terrorist Safe Havens*, dated July 31, 2012; U.S. Department of State, Bureau of South and Central Asian Affairs, *Fact Sheet*, dated September 6, 2012; and U.S. Department of State, Bureau of International Information Programs (IIP) Article, *U.S. Declares Haqqani Network a Terrorist Organization*, dated September 7, 2012.

³ Director of National Intelligence, *Unclassified Statement for the Record on the Worldwide Threat Assessment of the U.S. Intelligence Community for the House Permanent Select Committee of Intelligence*, dated February 2, 2012.

⁴ *Statement of Admiral Michael Mullen, U.S. Navy, Chairman, Joint Chiefs of Staff before the Senate Armed Services Committee on Afghanistan and Iraq*, dated September 22, 2011.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,⁵ as set forth below under the Afghanistan subsection.

Findings of Fact

In her Answer to the SOR, Applicant admitted only one of the factual allegations pertaining to financial considerations (§ 1.c.). All the remaining factual allegations pertaining to financial considerations and foreign influence (§§ 1.a. and 1.b., 1.d. through 1.f., and 2.a. through 2.c.) were specifically denied. Nevertheless, Applicant actually admitted, with explanations, substantial portions of several of those allegations. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 53-year-old employee of a defense contractor who, since June 2012, has served as a linguist.⁶ She previously worked for several different employers serving in a variety of positions, including nursing assistant/care giver, customer service, loan officer, broker, postal mail sorter, and realtor. Applicant has never served in the U.S. military,⁷ and she has never held a security clearance.⁸ She currently serves as a civilian linguist for the U.S. Army in support of Operation Enduring Freedom at or near a military facility in Afghanistan.⁹

Character References and Work Performance

In recognition of Applicant's exceptional performance while stationed in Afghanistan with an Army cavalry regiment in 2012, she was awarded a certificate of appreciation from her troop commander and linguist manager:¹⁰

In recognition of your support to Operation Enduring Freedom and the overall Global War on Terrorism. Your dedication, relentless efforts,

⁵ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

⁶ GE 1, *supra* note 1, at 14; GE 3 (Personal Subject Interview, dated July 11, 2012).

⁷ GE 1, *supra* note 1, at 24.

⁸ GE 1, *supra* note 1, at 59.

⁹ AE K (Certificate of Appreciation, dated November 26, 2012).

¹⁰ AE K, *supra* note 9.

professionalism and expertise proved an invaluable asset to the International Security Assistance Forces. Your steadfast commitment, support and friendship to Task Force . . . is much appreciated, and we hereby acknowledge your great contributions and offer our sincere appreciation for a job well done. . . .

The linguist manager of one of the Army units in Afghanistan characterized Applicant as “an extreme asset to our mission,” and said she has “earned the trust and confidence of every team member, including our Commander.”¹¹ Another linguist manager, as well as Applicant’s supervisor on a female engagement team, considered Applicant’s presence and quality of performance, especially during a variety of operations among the local populace, to be crucial to the mission. Applicant is considered the best, by far, of all the linguists working with those particular Army units.¹² A friend, who is a linguist and cultural adviser in Afghanistan, and who has known Applicant since they were in high school together, considers Applicant to be selfless, kind, and honest.¹³ Applicant’s son-in-law, a Naval reservist with a top secret security clearance, said she was a “committed, dedicated, and a loyal person,” who also assisted his family while he was deployed. He also stated that she “is on the top of my list of people I trust.”¹⁴

Financial Considerations

It is unclear when Applicant started experiencing financial difficulties which may have led to accounts becoming delinquent and placed for collection or charged off. At some point around 2005 or 2006, Applicant invested in a small used car dealership. The dealership went out of business and she lost her investment.¹⁵ She also went through two periods of unemployment (June through August 2008, and February 2009 through December 2011) during which she did not receive unemployment compensation, but was supported by her daughter.¹⁶ Because of her business loss and insufficient money to enable her to pay her taxes or other bills, accounts became delinquent, placed for collection, or charged off, and tax liens were filed against her.

Before she was employed as a linguist, Applicant provided a personal financial statement reflecting a monthly net income of zero; monthly expenses of \$200; and monthly debt repayments of \$100; leaving a monthly deficit of \$300.¹⁷ She also reported

¹¹ AE J (Memorandum, dated November 26, 2012).

¹² AE S (Character Reference, dated April 4, 2013); AE Q (Character Reference E-mail, dated April 4, 2013). See also, AE P (2012 Annual Assessment, dated December 22, 2012), wherein Applicant was rated “outstanding” in all of the ten competencies rated.

¹³ AE R (Character Reference E-mail, dated April 3, 2013).

¹⁴ AE L (Letter, dated March 24, 2013).

¹⁵ Tr. at 134.

¹⁶ GE 1, *supra* note 1, at 16, 18; GE 3, *supra* note 6, at 2.

¹⁷ GE 5 (Personal Financial Statement, date obliterated).

a savings account with \$1,900, and indicated she used her savings to pay her expenses.¹⁸

The SOR identified six purportedly continuing delinquencies. There is a state tax lien recorded in November 2009, for tax years 2005-2007, in the amount of \$3,537.60, including \$2,667 for tax, \$595.82 for penalty, \$604.78 for interest, and \$258 for collection fees, but also reflecting payments of \$588 (**SOR ¶ 1.a.**).¹⁹ Although both the June 2012 credit report (using information reported by TransUnion), and the August 2012 ROI, listed the account as a current unresolved tax lien, Applicant had actually paid off the outstanding balance and the lien was released on June 15, 2012 – three months before the SOR was issued.²⁰ The account has been resolved.

There is another state tax lien recorded in December 2008, for the tax year 2005, in the amount of \$2,730, including \$2,213 for tax, \$417.32 for penalty, \$445.79 for interest, and \$247 for collection fees, but also reflecting payments of \$588 (**SOR ¶ 1.b.**).²¹ Although Applicant had actually paid off the outstanding balance and the lien was released on June 15, 2012, and the August 2012 OPM ROI correctly reported that fact, the June 2012 credit report (using information reported by TransUnion) listed the account as a current unresolved tax lien.²² The account has been resolved.

There is a federal tax delinquency for the tax periods 2005 and 2007 in the amount of \$24,995.78 (**SOR ¶ 1.c.**).²³ In May 2012, four months before the SOR was issued, Applicant entered into an installment agreement with the Internal Revenue Service (IRS) under which she agreed to make monthly payments of \$100, commencing June 1, 2012.²⁴ The debt is in the process of being resolved.

There is a credit card account with a high credit of \$10,600 that was placed for collection and charged off (**SOR ¶ 1.d.**).²⁵ Applicant's niece obtained the credit card in 1990, and placed Applicant's name on the account as an authorized user in the event of

¹⁸ Personal Financial Statement, *supra* note 17.

¹⁹ GE 4 (Office of Personnel Management (OPM) Report of Investigation (ROI), dated August 30, 2012); GE 9 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 30, 2012), at 5. The August 2012 ROI reflects the recording date as November 19, 2009, but the state records indicate the actual date was November 12, 2009. See, AE A (Release of Lien, dated June 15, 2012).

²⁰ GE 9, *supra* note 19, at 5; GE 4, *supra* note 17; AE A, *supra* note 19; AE N (Equifax Credit Report, dated March 26, 2013), at 4; AE O (TransUnion Credit Report, dated March 26, 2013), at 2.

²¹ GE 4 (OPM ROI, dated August 30, 2012) (different from the other ROI of the same date); GE 9, *supra* note 19, at 5.

²² GE 4, *supra* note 21; GE 9, *supra* note 19, at 5; AE B (Release of Lien, dated June 15, 2012); AE N, *supra* note 20, at 4.

²³ Applicant's Answer to the SOR; GE 1, *supra* note 1, at 60.

²⁴ AE C (Installment Agreement, dated May 17, 2012); GE 1, *supra* note 1, at 60; GE 3, *supra* note 8, at 2.

²⁵ GE 9, *supra* note 19, at 7.

an emergency. The niece eventually declared bankruptcy, and her delinquent accounts, including this particular account were discharged.²⁶ The creditor declared that when the account was reported to the consumer reporting agencies, those agencies “are informed that authorized users are not contractually liable for the account.”²⁷ Nevertheless, the SOR alleged that Applicant was responsible for the account. Applicant successfully disputed the account with the creditor, and her name was ordered removed from her credit report.²⁸ The account has been resolved.

There is an account with a cable company with a high credit and unpaid balance of \$275 that was placed for collection (**SOR ¶ 1.e.**).²⁹ The account was transferred or sold to a collection agent. Applicant disputed the account in June 2012, claiming she only had an account for two months and had paid it off.³⁰ Her dispute was successful, and the collection agent agreed to have the account deleted from her credit report.³¹ The account has been resolved.

There is an automobile loan account with a past due balance of \$16,474 that was placed for collection and charged off (**SOR ¶ 1.f.**).³² Applicant informed the OPM investigator that she had experienced repeated mechanical problems with the vehicle. She was aware of a class action lawsuit filed against the manufacturer and eventually voluntarily surrendered the vehicle to the manufacturer’s representative.³³ Her explanation of her action was misinterpreted by the DOD adjudicator as constituting a “repossession,” but it was not. The class action resulted in a settlement between the parties, including Applicant who was a member of the class. The creditor acknowledged Applicant’s dispute in July 2012, and the account was ordered deleted from her credit report.³⁴ On November 20, 2012, as part of the settlement of the class action lawsuit, the creditor issued Applicant a payment of \$513, and her account was closed.³⁵ The account has been resolved.

²⁶ GE 3, *supra* note 8, at 3.

²⁷ AE F (Letter, dated March 22, 2013).

²⁸ AE F, *supra* note 27; AE D (Letter, dated January 4, 2013).

²⁹ GE 9, *supra* note 19, at 7; GE 3, *supra* note 8, at 3.

³⁰ GE 3, *supra* note 8, at 3.

³¹ AE G (Letter, dated March 25, 2013).

³² GE 9, *supra* note 19, at 7.

³³ GE 3, *supra* note 8, at 3.

³⁴ AE E (Letter, dated July 2, 2012).

³⁵ AE H (Letter, dated March 20, 2013); AE E (Letter and Check, dated November 20, 2012).

Foreign Influence

Applicant was born in Afghanistan.³⁶ Both of her parents (her father was a farmer who had previously served in the Afghan Army under the last King of Afghanistan; and her mother, a housewife)³⁷ were born in Afghanistan, and they are deceased.³⁸ Applicant was raised and educated in Afghanistan, and temporarily relocated to Pakistan because of the civil unrest and hostilities in Afghanistan during the Soviet invasion and occupation. After residing in several other countries as a refugee, she immigrated to the United States in 1982.³⁹ She became a naturalized U.S. citizen in 1991.⁴⁰

Applicant was married in Germany in February 1982 or 1983, and divorced in April 1994.⁴¹ She has one daughter, born in the United States in 1985.⁴² Applicant's ex-husband was born in Afghanistan, but has been a resident of the United States since he arrived in the 1980's, and is a naturalized U.S. citizen.⁴³ Applicant has four brothers, three of whom are citizens and residents of Germany, and one who is a citizen and resident of Afghanistan.⁴⁴ Her brother in Afghanistan is a farmer.⁴⁵ Before her current employment, Applicant communicated with him about once every four years.⁴⁶ She last visited with him several years ago, and before that, not since the mid-1990's. Because of concerns for his safety, she has not communicated with him or visited with him since she has been in Afghanistan as a linguist.⁴⁷

Applicant also has five sisters, three of whom are citizens and residents of Germany, one who is deceased, and one who is a permanent resident of Germany but a citizen of Afghanistan.⁴⁸ Although this one sister has resided in Germany for over 20

³⁶ GE 1, *supra* note 1, at 5.

³⁷ GE 6 (Relatives and Associates Chart, dated July 10, 2012), at 1; GE 7 (Afghanistan Relative and Associate Organization Chart, dated July 10, 2012), at 1.

³⁸ GE 6, *supra* note 27, at 1.

³⁹ GE 3, *supra* note 8, at 1; GE 6 (Foreign Travel Chart, dated July 10, 2012).

⁴⁰ GE 1, *supra* note 1, at 8; GE 3, *supra* note 8, at 1.

⁴¹ GE 1, *supra* note 1, at 26; GE 3, *supra* note 8, at 1.

⁴² GE 1, *supra* note 1, at 31; GE 3, *supra* note 8, at 1.

⁴³ GE 6 (Foreign Travel Chart, dated July 10, 2012), at 1; GE 3, *supra* note 8, at 1.

⁴⁴ GE 6 (Relatives and Associates Chart), *supra* note 37, at 1.

⁴⁵ Tr. at 104; GE 6, *supra* note 37, at 1.

⁴⁶ GE 6, *supra* note 37, at 1.

⁴⁷ Tr. at 105-106, 115-116.

⁴⁸ GE 6, *supra* note 37, at 1-2; Tr. at 111-114.

years, she is unable to master the German language well enough to pass the test for German citizenship.⁴⁹ Nevertheless, she considers herself a citizen of Germany.

Although she has a step-mother who is a citizen of Afghanistan, residing in Germany, Applicant has no relationship with her.⁵⁰ The woman has resided in Germany for over 20 years, and is illiterate and unable to take or pass the examination to become a naturalized German citizen.⁵¹

With the exception of Applicant's deceased father, there is no evidence that any member of her family has ever been associated with the Afghan military or intelligence service.

Applicant has never financially supported any relatives in Afghanistan.⁵² She considers herself to be a loyal American.⁵³

My loyalty is to the United States first. But yes, I want Afghanistan to be at peace because I work with these people, with children, and I pray to God that one day they - - they have peace and they live a comfortable life.

She acknowledged that her unit has come under fire and been confronted with explosive devices, and added:⁵⁴

. . . I'm in Afghanistan because I want to be there, because I am 53 years old, and I'm working with the Army, and these are all young [18, 19, and 20 years old] soldiers. I'm not only translator or language person there. I'm their mother. I'm really their mother, and I want to be there.

Afghanistan

Formerly under the control of the United Kingdom, Afghanistan received independence in August 1919. It has common borders with Pakistan on the east and the south, Iran on the west, and Russia on the north. Afghanistan has had a turbulent political history, including the abolishment of the monarchy in 1973, following a coup d'état, invasion by the Soviet Union in 1979, occupation by the Soviet Union until 1989, and civil war between the occupiers and home-grown freedom fighters, known as mujaheddin. Anarchy ensued, and fighting continued among the various ethnic, clan, and religious warlords and their respective militias even after the Soviet Union withdrew

⁴⁹ Tr. at 108-109.

⁵⁰ Tr. at 117-118.

⁵¹ Tr. at 117; Applicant's Answer to the SOR.

⁵² Tr. at 114.

⁵³ Tr. at 124.

⁵⁴ Tr. at 125, 149.

from the country. By the mid-1990s, the Taliban rose to power and controlled significant portions of the country, imposing repressive policies and Sharia law, guiding all aspects of Muslim life. Afghanistan became a sanctuary for terrorist groups.

After the September 11, 2001 terrorist attacks, United States demands that Afghanistan expel Osama Bin-Laden and his followers were rejected by the Taliban. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power. Following a few years of governance by an interim government, a democratic presidential election took place in October 2004, and a new democratic government took power. Despite the election, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. Terrorists continue to target United States and Afghan interests through suicide bombings, assassinations, and hostage taking.

Afghanistan's human rights record remains poor. There are continuing extrajudicial killings; torture and other abuse; widespread official corruption and impunity; ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; judicial corruption; violations of privacy rights; violence and societal discrimination against women; sexual abuse of children; trafficking in persons; and restrictions on freedoms of religion, the press, assembly, and movement.

Taliban insurgents retain the capability and intent to conduct attacks and kidnappings of Americans, other Western nationals, and members of the local populace. The United States has made a long-term commitment to help Afghanistan rebuild itself after decades of war, and along with others in the international community, provides substantial assistance, focusing on reintegration, economic development, improving relations with Afghanistan regional partners, and steadily increasing the security responsibilities of the Afghan security forces. Furthermore, there is increased terrorist support coming into Afghanistan from Pakistan and Iran. Not only has the security situation remained volatile and unpredictable throughout Afghanistan, but there are also tensions with Afghanistan over limiting U.S. military operations.

The security situation in Afghanistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. In early 2009, the Federally Administered Tribal Areas (FATA), a semi-autonomous tribal region in northwestern Pakistan, continued to provide vital sanctuary to al-Qaida and a number of foreign and Pakistan-based extremist groups. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremists groups, al-Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”⁵⁵ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁵⁶

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁵⁷ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁵⁸

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

⁵⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵⁷ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁵⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁵⁹

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁶⁰ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. Commencing in about 2005 or 2006, and continuing for several years thereafter, Applicant was unable to pay her taxes or other bills, and accounts became delinquent, placed for collection, or charged off, and tax liens were filed against her. AG ¶¶ 19(a) and 19(c) apply.

⁵⁹ *Egan*, 484 U.S. at 531

⁶⁰ See Exec. Or. 10865 § 7.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *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*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *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*. Evidence that *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* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.⁶¹ In addition, it is potentially mitigating under AG ¶ 20(e) when *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*.

AG ¶¶ 20(b), 20(c), 20(d), and 20(e) apply. The nature, frequency, and relative recency of Applicant's purported financial difficulties since 2005 or 2006, and continuing for several years thereafter, make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Her financial problems, at least with respect to her tax issues, were attributed to a loss of her business investment and two periods of unemployment, circumstances that were clearly largely beyond her control. She used her savings to remain current on a number of her accounts. In an effort to address and resolve her accounts, Applicant contacted her creditors and collection agents regarding the alleged delinquent accounts. She managed to pay off her delinquent taxes and resolved her tax liens. Applicant successfully disputed two accounts, satisfying one creditor that the account was not her responsibility, but that of her niece, and satisfying the other creditor by indicating that the account had previously been resolved. The one remaining purported delinquent account, listed in the SOR as a repossession rather than a class action lawsuit, turned out to be an inaccurate allegation. Applicant had a reasonable basis to dispute the legitimacy of some of her accounts, and provided documented proof to substantiate the basis of her disputes. While there is little evidence that Applicant ever received financial counseling, there are clear indications that her financial

⁶¹ The Appeal Board has previously 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 [or statute of limitations]) 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. June 4, 2001)).

problems have been resolved and are under control.⁶² Applicant's actions under the circumstances confronting her do not cast doubt on her current reliability, trustworthiness, or good judgment.⁶³

There is a substantial risk when one accepts, at face value, the contents of a credit report without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and "other sources," and it is these other unidentified sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual's credit history can look worse than it really is. In this particular instance, the credit reports referred to several accounts that were either incorrectly reported or no longer accurate after the status of the account had changed. Erroneous entries were eventually deleted, but it took the combined efforts of Applicant and her creditors to accomplish the task. The Appeal Board has previously held that "adverse information from a credit report can normally meet the substantial evidence standard." However, when the information in the credit report is refuted by documentation from the actual creditor, and the credit reporting company is furnished the correct information but still refuses or fails to correct its entries in a timely manner, one can conclude that the information in the credit report – actually a summary or secondary evidence pertaining to an account – is less accurate, trustworthy, or reliable than the other evidence of record.⁶⁴

Guideline B, Foreign Influence

The security concern under the Foreign Influence guideline 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

⁶² "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁶³ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁶⁴ In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

States citizens to obtain protected information and/or is associated with a risk of terrorism.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁶⁵ Applicant's varied relationships with one of her brothers, a citizen and resident of Afghanistan; one of her sisters, a citizen of Afghanistan and a permanent resident of Germany; and her step-mother, a citizen of Afghanistan and a permanent resident of Germany, are current security concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), it is potentially disqualifying where there is:

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.

Similarly, under AG ¶ 7(b), security concerns may be raised when there are:

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) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with those two siblings and her step-mother to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where:

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.

Similarly, AG ¶ 8(b) may apply where the evidence shows:

⁶⁵ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

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.

In addition, AG ¶ 8(c) may apply where:

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.

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.⁶⁶ In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."⁶⁷

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

As noted above, since October 2001, when U.S. forces and coalition partners led military operations in Afghanistan, there has been first an interim government, and then a democratic government in Afghanistan. Nevertheless, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. It is less likely that the Afghan government would attempt coercive means to obtain sensitive information. The real concern in this instance is not the Afghan government, but rather al-Qaida and Taliban terrorists. Applicant's one brother still resides in Afghanistan and there is substantial risk – a "heightened risk" – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. Because of her sister's and step-mother's permanent residence in Germany, that heightened risk is essentially diminished and there is no continuing substantial risk of any kind of foreign

⁶⁶ See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

⁶⁷ ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. There is no evidence that Applicant's brother is or has ever been a political activist, challenging the policies of the Afghan government; that terrorists have approached or threatened Applicant or her brother for any reason; that the Afghan government, al-Qaida, or the Taliban have approached Applicant; or that her brother currently engages in activities that would bring attention to himself. As such, there is a reduced possibility that he would be a target for coercion or exploitation by the Afghan government, al-Qaida, or the Taliban, which may seek to quiet those who speak out against them.

Applicant has significant connections to the United States, having lived in the United States for over 30 years. Her ex-husband, daughter, and grandchildren are U.S. citizens residing in the United States. Applicant wants her security clearance so that she can remain in Afghanistan to assist U.S. Armed Forces in their combat and intelligence-gathering mission there. This is not a situation where an applicant seeks a security clearance so he or she can simply work with classified information and enjoy the comforts of home in the United States. Applicant has offered to continue to risk her life to support the United States' goals in Afghanistan, and has shown her patriotism, loyalty, and fidelity to the United States. Applicant's continuing relationship with her one sister is close and her contacts with her are relatively frequent, too close and frequent to generate more than a limited application of AG ¶¶ 8(a) and 8(c). Her relationship with her one brother has, because of security concerns, been guarded and infrequent. Her relationship with her step-mother is not close and her contact with her is basically nonexistent. Applicant has met her burden of showing there is little likelihood that relationships with her one brother, or one sister, or her step-mother, could create a risk for foreign influence or exploitation. Furthermore, I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that she has "such deep and longstanding relationships and loyalties in the U.S., that [she] can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶ 8(b) applies.

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 the 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 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁶⁸

There is some evidence against mitigating Applicant's situation, because one of her brothers remains an Afghan citizen-resident, and is at risk from al-Qaida and Taliban terrorists. Applicant also was unable to pay her taxes or other bills, and accounts became delinquent, placed for collection, or charged off, and tax liens were filed against her.

The mitigating evidence under the whole-person concept is more substantial. Applicant has offered to continue to risk her life to support the United States' goals in Afghanistan, and has shown her patriotism, loyalty, and fidelity to the United States by remaining embedded with U.S. Army infantry units. She is fully aware of the risks to herself and her brother from al-Qaida and Taliban terrorists. These circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit her.⁶⁹ Moreover, while the "heightened risk" of terrorist activities occurring in Afghanistan is of significance, it should also be remembered that terrorists and would-be terrorists are also active in the United States, creating a substantial risk here as well. With the vast majority of her family members residing either in the United States or Germany, there is a reduced risk of foreign exploitation, inducement, manipulation, pressure, or coercion. As far as the financial issues are concerned, Applicant resolved all of the tax delinquencies, had her liens released, and successfully disputed and corrected the erroneous allegations of other delinquencies. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

⁶⁸ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

⁶⁹ See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

Paragraph 2, Guideline B:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Subparagraph 2.b:

For Applicant

Subparagraph 2.c:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge