



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-11093
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Michael D. McGlinn, Esq.

October 29, 2013

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant’s mother, older brother, and five sisters are citizens and residents of Afghanistan. Applicant’s father-in-law and mother-in-law were citizens of Afghanistan, but are deceased. He mitigated the Foreign Influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his electronic Security Clearance Application (e-QIP) on September 19, 2011. On October 11, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the Guideline for Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR (Answer) on November 8, 2012, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on March 25, 2013. At that time, Applicant was overseas and requested that the hearing be delayed until he returned to the United States. A notice of hearing was issued to Applicant on April 3, 2013, scheduling the hearing for August 27, 2013. On July 23, 2013, the hearing was rescheduled to September 5, 2013.

The hearing was convened on September 5, 2013, as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through V. AE A through Q, and S through V were admitted into the record without objection. Department Counsel objected to AE R as not material or probative of Applicant's suitability for a security clearance. I sustained the objection. DOHA received the transcript of the hearing (Tr.) on September 13, 2013. The record was left open for receipt of additional documentation. On September 16, 2013, Applicant presented AE W through AE AA. Department Counsel had no objection, and AE W through AE AA were admitted into evidence. On September 27, 2013, Applicant presented AE BB through AE GG. Department Counsel had no objection, and they were admitted into evidence. On October 10, 2013, Applicant submitted a final three-page exhibit, which I marked AE HH. Department Counsel had no objection to AE HH and it was admitted into evidence. The record was then closed.

## **Procedural Ruling**

### **Request to take Administrative Notice**

At the hearing, the Government requested I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a six-page summary of the facts, supported by nine Government documents pertaining to Afghanistan, identified as Hearing Exhibit (HE) I. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant is 36 years old. He was born in Afghanistan. He left Afghanistan, at the age of 14, when his family fled to Pakistan to escape the communist influence in Afghanistan. They lived in a refugee camp in Pakistan for seven years. As a refugee, where conditions were harsh, Applicant dreamed of going to a country with no war and no "flying jets really close to your house." Applicant immigrated to the United States in June 1997, after winning a visa lottery. He counts the day he was notified he won the lottery as the "luckiest day in [his] life." He was naturalized as a U.S. citizen on March 19, 2008. (GE 1; GE 2; Tr. 42-43, 117.)

Applicant is married to a naturalized U.S. citizen. They have been married for seven years. Together, they have a newborn daughter. Applicant's wife works for a U.S.

city government as an engineer. Her sister recently relocated from Canada to Applicant's hometown. Additionally, Applicant has one brother living nearby in the same U.S. city and maintains a close relationship with him. Applicant also has an eight-year-old daughter from a prior relationship. He has no contact with his oldest child, but does pay child support for her. He is current on his child support obligations. Applicant and his wife are actively searching for a home to purchase in their U.S. city before the end of this year, as documented in a letter from their real estate agent. (GE 1; GE 2; AE A; AE CC; AE DD; Tr. 39-40, 94-96.)

Applicant is currently on hiatus from his pursuit of an engineering degree at a U.S. university. He is currently employed as a linguist for a government contractor. He intends to complete his final credits to achieve his bachelor's degree after his services as a translator. During his attendance at the university, he was actively engaged as part of his community and was a member of a number of student groups. (GE 1; GE 2; Tr. 123-124.)

Applicant has received a number of certificates, letters of recommendation, coins, and exceptional performance appraisals acknowledging his contributions as a linguist. They reflect appreciation for his loyalty, patriotism, and support during the war on terror. Applicant is known as a team player who has gone the extra mile for his team on numerous occasions, including his performance in combat situations. He was recognized for his assistance "in the capture [of] countless threats to US forces." (AE C through AE E; AE G through AE Q; AE S; AE U; AE X through AE HH.)

Applicant testified about a patch that he was given after a foot patrol that he was on was ambushed by the Taliban. He was active in finding IEDs in the alley into which his team had retreated. His actions saved lives. He testified that he knows that if the Taliban captured him, he would endure a slow and painful death because they would consider him a traitor and they know the importance of linguists. However, Applicant is proud of his service and dedication to the United States and its mission in Afghanistan. (Tr. 57-83, 97-102.)

When Applicant was asked what he would do if he were ever placed in a position of having to choose between protecting classified information and his family in Afghanistan, he replied:

A           Because I know information -- working with the United States Army -- I have learned that information is a very strong tool and that can hurt a lot of people. I cannot do that because peoples' lives depend on the information that I would be holding. And for that, I think, I believe that life is very important. The people who depend on those [sic] information, it is very important to me.

Q           So, if for instance, somebody called up and said I have your brother's son -- with a gun to the head -- wouldn't you want to try and save your nephew's life and provide what they want?

A Because I know that I may save one life, but I would put in danger like more lives by giving that information. (Tr. 48-49.)

## **Foreign Influence**

The SOR alleged that Applicant's mother, older brother, and five sisters are citizens and residents of Afghanistan. It also alleged that Applicant's father-in-law and mother-in-law are citizens of Afghanistan. Applicant admitted these allegations. However, the SOR identified Appellant as having a step-son in Afghanistan, which Applicant denied. (Answer.)

Applicant's mother is a citizen and resident of Afghanistan. She lived in the United States with one of Applicant's brothers, but returned to Afghanistan in May 2008. She is 78 years old. Applicant communicates with her two or three times per month. He last saw her in 2010. She was a housewife and has never been employed. His father passed away in approximately 1986, but worked as a Mayor of a city before his death. His mother is supported by one of Applicant's nephews, who works for a non-governmental organization in Afghanistan. (GE 1; GE 2; Tr. 87- 93, 121.)

Applicant has one brother who is a citizen and resident of Afghanistan. He is approximately 54 years old and is attending a university in Afghanistan. Applicant communicates with his brother by phone once each month and admitted he is close to his brother. His brother is aware of his work as a translator. His brother is married and has 12 children. Applicant sent approximately \$500 to \$600 per year to his brother until 2009. Prior to Applicant leaving Afghanistan in 1991, Applicant's brother was imprisoned for his opposition to the government in Afghanistan and his participation in the Hizb-I-Islami Gulbudin-Hekmatyar (HIG)<sup>1</sup>. He worked for HIG as an office clerk and never fought on behalf of the Mujahideen. When he was released from prison, Applicant's family fled to Pakistan. Applicant's brother renounced his interest in HIG in 1992, and stated in a signed declaration that "I do not have any communication with the organization nor with their members." (AE A; AE V; AE W; Tr. 41- 47, 87, 93-94, 112-113.)

Applicant's oldest sister is 56 years old and is a citizen and resident of Afghanistan. She is married to a photographer and is a housewife. Applicant has not spoken to her since 2002. (GE 1; GE 2; Tr. 47.)

Applicant's second oldest sister is 47 years old and is a citizen and resident of Afghanistan. She is a housewife and is married to a security guard. Applicant has contact with her once or twice per year. He has not had contact with her husband since 2004. (GE 1; GE 2; Tr. 47.)

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<sup>1</sup> HIG is an insurgent group in Afghanistan. It was the most radical of the seven mujahideen factions fighting the Soviets in the 1980s and was a favorite of the CIA. It received the greatest portion of foreign assistance. On February 19, 2003, the United States designated HIG a Foreign Terrorist Organization. Post September 11, 2001, HIG is believed to have alliances with the Taliban and al-Qaida, and to have reconnected with the ISI. (GE 3.)

Applicant's third oldest sister is 45 years old and is a citizen and resident of Afghanistan. She is married to a doctor. Applicant has spoken to her by phone once or twice in the past ten years. He has had no contact with her husband since 2010. (GE 1; GE 2; Tr. 47.)

Applicant's fourth oldest sister is 41 years old and is a citizen and resident of Afghanistan. She is a housewife and is married to a truck driver. Applicant has not had contact with this sister since 2010, and no contact with this brother-in-law since 1997. (GE 1; GE 2; Tr. 47.)

Applicant's youngest sister is 38 years old and is a citizen and resident of Afghanistan. She is a housewife and is married to a tailor. Applicant reported having no contact with her or her husband since 2004. (GE 1; GE 2; Tr. 47.)

Applicant's wife was adopted as a child. Her adoptive parents, Applicant's mother-in-law and father-in-law were citizens and residents of Afghanistan, but are deceased. His wife reunited with her birth parents, who are citizens of Afghanistan, but reside in the United States. (GE 2; Tr. 94-95.)

Applicant denies having a step-son in Afghanistan. There was no documentation introduced into evidence to support this allegation. (Tr. 95-96.)

## **Afghanistan**

In May 2012 the United States and Afghanistan signed a ten-year strategic partnership agreement that demonstrated the United States' enduring commitment to strengthen Afghan sovereignty, stability, and prosperity. Since that time, the core goal of the United States in Afghanistan has been to disrupt, dismantle, and defeat al-Qaida and its affiliates, and to prevent their return to Afghanistan. Despite progress made since the Taliban was deposed, Afghanistan still faces challenges like defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding shattered physical, economic, and political infrastructure. (HE I.)

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly sophisticated and destabilizing. Human rights problems include: armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; torture and abuse of detainees by security forces; extrajudicial killings; poor prison conditions; arbitrary arrests and detention; prolonged pretrial detention; judicial corruption; violation of privacy; restrictions on freedom of speech; and abuse of children. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence. U.S. citizens who are also citizens of Afghanistan may be subject to other laws that impose special obligations. (HE I.)

## Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." 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.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

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

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

To be fully applicable, AG ¶ 7(a) requires the presence of both family members (or business or professional associates, friends, or other persons) who are citizens and/or residents of a foreign nation and substantial evidence of a heightened risk. Applicant's mother, brother, and five sisters are citizens and residents in Afghanistan. The heightened risk required to raise one of these disqualifying conditions 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 or substantial assets in a foreign nation. Terrorist groups and other criminal organizations operate within Afghanistan. Further, the government of Afghanistan has been identified as committing human rights violations. In this instance, a heightened risk is present. The evidence is sufficient to raise AG ¶ 7(a).

Applicant has connections to his mother, brother, and five sisters who are citizens and residents in Afghanistan and could potentially create a conflict of interest between his duty to protect classified information and his desire to help his foreign family members. His brother's involvement in HIG occurred in more than 20 years ago,

during a time when the organization was supported by the CIA and was not identified by the U.S. as a terrorist organization. His brother was a low-level office clerk. His brother's past associations with HIG are no longer a concern, given the evidence presented. AG ¶ 7(b) applies.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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 interests in favor of the U.S. interests.

Applicant has submitted considerable evidence to show that he has substantial family ties in the United States that outweigh his relationship to Afghanistan and his relatives there. He fled Afghanistan at age 14 to live in difficult conditions in a Pakistani refugee camp to escape communism. He has lived in the United States much longer than he lived in Afghanistan. His wife, daughter, in-laws, and one brother all reside near him in the United States. His friends and educational opportunities are in the United States. He is searching for a home to purchase. His wife works for a city government and they are entrenched in their local community. On the other hand, his ties to Afghanistan are limited to his continuing relationship to his mother and brother. His contact with his sisters is infrequent, though not causal since they are family. While he cares about his family in Afghanistan, he has worked hard to build a life in the United States. His allegiances are to his chosen nation, not that of his birth, as evidenced by his behavior during armed conflict while working as an interpreter for the U.S. forces. Applicant can be expected to resolve any conflict of interests or attempted coercion in favor of the U.S. interests. AG ¶ 8(b) is mitigating.

### **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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a patriotic American citizen, whose work under often-dangerous combat conditions has been of particular value to our military mission in Afghanistan. He presented considerable evidence showing that his allegiance is to the United States and not Afghanistan. Accordingly, I find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his foreign connections. He is eligible for a security clearance.

### **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:	For Applicant
Subparagraphs 1.b:	For Applicant
Subparagraphs 1.c:	For Applicant
Subparagraphs 1.d:	For Applicant
Subparagraphs 1.e:	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 or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

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Jennifer I. Goldstein  
Administrative Judge