



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 12-12302  
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Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Department Counsel  
For Applicant: *Pro se*

August 20, 2013

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on June 1, 2010. (Government Exhibit 5) On April 4, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 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 within the Department of Defense after September 1, 2006.

Applicant responded to the SOR in writing on May 1, 2013, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on May 29, 2013. Applicant received the FORM on June 24, 2013. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicants submitted a response to the FORM dated July 8, 2013. This case was assigned to the undersigned on July 24, 2013. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

## REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Afghanistan. (See FORM.) There was no objection from Applicant. (See Applicant's Answer to FORM.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### FINDING OF FACTS

The Applicant is 66 years old and has a Bachelor's Degree in Civil Engineering. He is employed with a defense contractor and holds the position as an Interpreter, and a security clearance in necessary in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence, which could result in the compromise of classified information.

The Applicant was born in Gulbahar, Afghanistan. He was raised in Kabul, Afghanistan and graduated from the University there. (Government Exhibit 5.) From 1974-1975 he served a mandatory year of Afghan military service. After his military service, he was employed by the Afghan government as an engineer. In 1982, Applicant moved to a refugee camp in Pakistan because he felt his neighbors and co-workers were suspicious of his western contacts. (Government Exhibit 6.) In 1984, he married his wife, also born in Afghanistan. They have four children, two were born in Pakistan and are now naturalized U.S. citizens, and two were born in the U.S. and are citizens here. In 1988, Applicant and his family immigrated to the U.S. as refugees. He became a naturalized U.S. citizen in 1994 and has had a United States passport since 1995. (Government Exhibit 5.) His wife is also a naturalized U.S. citizen.

Applicant has 21 family members who are citizens and residents of Afghanistan. Applicant indicates that he has maintained contact with many of these family members reporting differing frequencies of contact ranging from none to monthly, quarterly to bi-annually. (Government Exhibit 4.)

Applicant's step-mother is a citizen and resident of Afghanistan. He has one brother and five sisters who are citizens and residents of Afghanistan. He has a half-brother who is a citizen and resident of Afghanistan and serves as an officer in the Afghan National Army. He also has two half-sisters who are citizens and residents of Afghanistan. He has one sister-in-law and eight brothers-in-law who are citizens and residents of Afghanistan. One brother-in-law has served in the Afghan National Army since 2010. Another one of his brothers-in-law works as a guard for the government of

Afghanistan. He also has an uncle and a nephew who are citizens and residents of Afghanistan. (Government Exhibit 4.)

Applicant indicated that he last saw some of his relatives in Afghanistan in 2007. He further indicated that he had contact with all of his family members listed in the SOR in 2010, except one sister. (Government Exhibit 4.) In 2012, he was only in contact with one of his sisters, about once every three months. He stated that he contacted two of his other sisters once in a while, and his brother-in-law twice a year. He states that he has good relationships with his step-mother, brother, sisters, step-brother and step-sisters, and his uncle and nephew. (Government Exhibit 6.)

There are, however, several big discrepancies in the information provided by the Applicant concerning the frequency of his contacts with his family members. (Government Exhibit 4.) Applicant's Answer conflicts with the information he provided in 2010 when he reported contact with his step-mother once every three months, but in his Answer says that his last contact was in 2007. (Government Exhibit 4.) In his Answer, Applicant states that he contacts his brother on a monthly basis, his sister once a month to once or twice a year, to once in a while, and with his half-brother from once a month to once about every four months to once in awhile. In regard to his brother-in-law, who is employed as a guard for the Afghan government, in 2010 Applicant reported that he had contact with him once a month. In his Answer, he stated he had not had contact with him since 2007. (Government Exhibit 4.) In his Answer, Applicant admits that he has eight brothers-in-law who are citizens and residents of Afghanistan, including one who has served in the Afgan Army since 2010. Applicant's indicated in 2012 that this brother-in-law is deceased. (Government Exhibit 7.) However, in his 2013 Answer, Applicant's stated that he last saw him in 2007 and that the Afghan Army is supporting the US to fight against insurgency. Based upon this response, Applicant's brother-in-law will be presumed alive. In 2010, Applicant indicated that he has contact with his brother-in-law who works as a guard for the Afghan Government about once a month. In 2012, he indicates that he has no contact. Based upon this series of conflicting information, it is difficult to determine what is really going on.

In Applicant's response to the FORM, he stated that before his father passed away in 2010, he called his father almost monthly to talk with him. At that time, he also spoke to his step-mother and half-brother who lived with him. He states that after his father passed away in 2010, his interest in contacting his relatives was much more limited. However, he does not feel it was right to just forget them. (See Applicant's Response to FORM.)

I have taken official notice of the following facts concerning Afghanistan. Afghanistan is an Islamic republic. It has been an independent nation since August 19, 1919, after the British relinquished control. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union. In mid-1990's the Taliban rose to power largely due to the anarchy and the divisions of the country among warlords that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin-Laden

since the mid-1990's, to al-Qa'ida generally, and to other terrorist organizations. After September 11, 2001 terrorist attacks, U.S. demands that Afghanistan expel Bin-laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001.

Although there has been some progress since the Taliban was deposed, Afghanistan still faces many daunting challenges, principally defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic and political infrastructure. Human rights problems included extrajudicial killings; torture and other abuse; poor prison conditions; widespread official impunity; ineffective government investigations of local security forces; arbitrary arrest and detention; judicial corruption; violation of privacy rights; restrictions of freedom of religion; limits on freedom of movement; violence and societal discrimination against women; sexual abuse of children; abuses against minorities; trafficking in persons; abuse of worker rights; and child labor. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical, and travel to all areas of Afghanistan remains unsafe, due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups and the possibility of terrorist attacks.

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline B (Foreign Influence)

6. *The Concern.* 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.

#### Conditions that could raise a security concern:

7.(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

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.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The voluntariness of participation;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## CONCLUSION

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be subject to foreign influence that may lead to poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's situation and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

Because of the scope and nature of the Applicant's connections to Afghanistan, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline B of the SOR.

Under Foreign Influence, Guideline B, Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and 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. None of the mitigating conditions are applicable.

Applicant is in contact with a number of his family members in Afghanistan within any given year. In 2007, he had contact with some of his relatives in Afghanistan. In 2010, he had contact with all of his relatives there. In 2013, he continues to be in contact with many of them. Even though the Applicant's immediate family that includes his wife and children reside in the United States, he maintains a close familial relationship with his many relatives in Afghanistan. Applicant obviously has an emotional bond and close association with his foreign family members. The conditions in Afghanistan are volatile and dangerous due primarily to the significant economic, political, and military unrest, as well as the ongoing robust terrorist threat. These conditions, coupled with the Applicant's ongoing familial ties to his relatives in Afghanistan, present a risk that he may be placed in a position of choosing between his interests, and the interests of the United States, either through influence brought upon them by outside forces, or influence they may try to assert given their ties to Afghanistan. Therefore, his foreign contacts do pose a security risk. Under the heightened scrutiny analysis, the Applicant's numerous family members in Afghanistan

pose a significant security risk. In addition there is conflict and discrepancies in the evidence provided by the Applicant concerning the frequency of his contact with his foreign relatives. Whether the problem be one of credibility or simply the language barrier, the Government cannot take the risk. Furthermore, Applicant has not provided sufficient evidence to mitigate these concerns. Except for his self-serving statements, there is no independent evidence in the record concerning his professional record, letters of recommendation on any level, his connections to the United States, or any updated information concerning his relationships with various family members in Afghanistan. Without such, I find against the Applicant under Guideline B.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information. The evidence fails to mitigate the negative effects his foreign influence can have on his ability to safeguard classified information.

On balance, it is concluded that the Applicant has not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusory allegations expressed in Paragraph 1 of the SOR.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:	Against the Applicant.
Subpara. 1.a.:	Against the Applicant.
Subpara. 1.b.:	Against the Applicant.
Subpara. 1.c.:	Against the Applicant.
Subpara. 1.d.:	Against the Applicant.
Subpara. 1.e.:	Against the Applicant.
Subpara. 1.f.:	Against the Applicant.
Subpara. 1.g.:	Against the Applicant.
Subpara. 1.h.:	Against the Applicant.
Subpara. 1.i.:	Against the Applicant.

## **CONCLUSION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey-Anderson  
Administrative Judge