



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



In the matter of:

ISCR Case No. 13-00136

Applicant for Security Clearance

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

11/05/2013

**Decision**

LYNCH, Noreen A., Administrative Judge:

On April 10, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance, citing security concerns under Guideline B (Foreign Influence). 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) implemented in September 2006.

Applicant received the SOR and requested an administrative determination in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated August 21, 2013. Applicant received the FORM on September 23, 2013.<sup>1</sup> He submitted additional documentation in a timely manner. The case was assigned to me on October 29, 2013. Based on a review of the file, I find Applicant has not mitigated the security

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<sup>1</sup>The Government submitted seven items in support of its case.

concerns raised under Guideline B. Eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

The Government, through Department Counsel, requested that I take administrative notice of certain facts relating to Afghanistan. The request and the attached documents are included in the record file. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations under Guideline B in ¶¶ 1.a-1.c, and denied ¶¶ 1.d-1.f. His admissions are incorporated in my findings of fact. I make the following findings:

Applicant is 32 years old and was born in Afghanistan. He came to the United States in 2001, and became a naturalized U.S. citizen in May 2006. In 2006, Applicant married his wife who was born in Afghanistan. She is now a naturalized U.S. citizen. As a result of the marriage, they have two children, who are United States citizens.

Applicant is an employee of a defense contractor and is currently deployed to Afghanistan working with U.S. Armed Forces as a Category II linguist. Applicant's security clearance application notes that he applied for a security clearance in February 7, 2012 while working in Afghanistan. (Item 5)

Applicant's five brothers, mother-in-law, father-in-law, three brothers-in-law, and two sisters-in-law are citizens and residents of Afghanistan. The SOR alleges security concerns based on Applicant's extended family in Afghanistan. The SOR further alleges that Applicant's three brothers, and one brother-in-law work for the Afghan government and that his father-in-law is a police officer in Afghanistan. (Item 1)

Applicant outlined the extent of his contacts with his family in Afghanistan in his 2012 security clearance application. He noted contact with his brothers and brothers and sisters-in-law once a month by telephone. He also listed monthly phone contact with his wife's parents. (Item 6) Applicant disclosed that he sponsored other family members (his wife, mother-in-law, and his niece's husband) to become U.S. citizens. He traveled to Afghanistan to visit family in 2004, 2006, 2007, and 2011. (Item 5)

In February 2012, Applicant was interviewed by a DOD investigator. He noted that he worked as a linguist for private companies from 2003 until 2012. He also revealed during that interview that his three brothers and one brother-in-law held high positions within the Afghan government. He stated that he had contact with them on either a weekly or monthly basis. (Item 6) Applicant also disclosed that he sent money to his favorite brother who has health problems. He sent about \$9,000 in 2010 and has sent

some money to his other brothers as well. He estimates that he has sent about \$17,000 to his brothers since his arrival in the United States. (Item 6)

Applicant considers the United States as his homeland. He is not interested in living in Afghanistan. He states that the United States gives him everything and in Afghanistan there are no opportunities. He believes he was lucky to have the opportunity to come to the United States. He and his family swore to protect the interests of the United States when they became U.S. citizens. He explained in a security screening questionnaire that he has never been threatened and his foreign contacts will not create a potential conflict. (Item 6)

There is no evidence in the record that Applicant breached any security policies or procedures while in Afghanistan. Applicant submitted a Certificate of Appreciation for his work in Afghanistan. He also submitted a letter of recommendation from an intelligence officer who has known him since 2012. He describes Applicant's work as superb. He has lived and worked under the same daily risks and austere conditions as uniformed U.S. soldiers. Applicant's personal conduct and work performance exceed standards. He is a valued member of the team. (Response to FORM)

In 2013, in response to the FORM, Applicant changed his answers about the nature and frequency of contacts with his family in Afghanistan. He admits that his brothers are still in Afghanistan, but he states that since working in Afghanistan, he has had no contact with them. He also reports that his mother, who lives in the United States, has told him that they are in the process of coming to the United States. His mother has started the "paperwork" for two of them to leave Afghanistan for the United States.

As for his mother-in-law and father-in-law, they are also in the process of coming to the United States. His wife has filed paperwork for them and her brother and sister to come to the United States. (Response to FORM; Item 4)

Applicant now denies that his brothers are working for the Afghan government. He states that the last he heard from them they are unemployed and working on their farms. He also noted that his father-in-law does not work as a police officer any more. He has now opened a clothing shop. (Response to FORM; Item 4)

Finally, Applicant noted that his brother-in-law who used to work in the Afghan ministry, is now in the United States, and seeking employment as an interpreter.

Applicant emphasized that he has not had any foreign contacts since his deployment to Afghanistan with the U.S. Army. He states that while he used to talk to his brothers when he was in the United States, he does not now. He noted that his brothers resigned from their positions within the Government due to a change of leadership in the Government. He states that he has not told anyone about his work because of the security risk. He does not have direct contact with his in-laws. (Response to FORM)

## Administrative Notice

I take administrative notice of the following facts about Afghanistan, including the fact that Afghanistan has been an independent nation since August 19, 1919, after the British relinquished control. A monarch ruled from 1919 until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. 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 an agreement known as the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union which ensured Soviet forces withdrew by February 1989.

The *mujaheddin* were not a party to the negotiations for the Accords and refused to accept them. As a result, civil war continued after the Soviet withdrawal. In the mid 1990s, the Taliban rose to power largely due to the anarchy and warlordism 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, as well as Al Qa'ida, and other terrorist organizations.

After the September 11, 2001 terrorist attacks, demands to 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. A new democratic government took power in 2004. Despite progress made since the Taliban was deposed, Afghanistan still faces many daunting challenges. Among these challenges are defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic, and political infrastructure.

The Taliban, Al-Qa'ida, other insurgent groups, and anti-Coalition organizations continue to operate in Afghanistan, resulting in numerous attacks and deaths. Insurgents have targeted non-governmental organizations (NGOs), Afghan journalists, government workers, and UN workers. Instability along the Pakistan-Afghan frontier continued to provide al-Qa'ida with leadership mobility and the ability to conduct training and operational planning, targeting Western Europe and U.S. interests in particular. Kabul, in particular, has seen a rise in militant attacks, including rocket attacks, vehicle-borne improvised explosive devices (IEDs), and suicide bombings.

At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. 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.

The United States supports the efforts of the Afghan Government to establish a vibrant civil society, one that emphasizes democratic principles through a rule of law and creates accountable and transparent forms of government. The United States and its international partners remain committed to helping Afghans realize their vision for a country that is stable, democratic, and economically successful, and to an Afghan Government committed to the protection of women's rights, human rights, and religious tolerance.

On May 2, 2012, the United States and Afghanistan signed the *Enduring Strategic Partnership Agreement between the Islamic Republic of Afghanistan and the United States of America*, a 10-year-strategic partnership agreement (SPA) that demonstrates the United States' enduring commitment to strengthen Afghanistan's sovereignty, stability, and prosperity and continue cooperation to defeat Al-Qaida and its affiliates.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon an applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of an applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination of the loyalty of an applicant. It is merely an indication the applicant has

not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify an applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to an applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline B (Foreign Influence)**

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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(b). Finally, AG ¶(d) “sharing

living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion” is a disqualifying condition in this case.

Applicant admits that his five brothers, and his wife’s parents and siblings are citizens and residents of Afghanistan. Applicant reported contact with them. He saw them when he visited Afghanistan in 2004, 2006, 2007, and 2011. In his 2012 screening interview, he said some of his brothers worked for the Government of Afghanistan. However, under either disqualifying condition, security concerns could arise in connection with the potential that hostile forces might seek protected or classified information from Applicant by threatening harm to his family members in Afghanistan. Based on this evidence, AG ¶¶ 7(a), (b), and (d) are raised.

Since the Government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG 8(b) “there is no conflict of interest, either because the

individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the 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" does not apply.

Applicant has not presented sufficient information to mitigate the security concerns given his relationships and frequency of contact with his relatives in Afghanistan. His work as a linguist supporting the U.S. military in Afghanistan is laudable. The record shows that he is now working in Afghanistan as a linguist and worked in the United States in a cultural role to help the U.S. military.

Applicant's immediate family are citizens and residents of the United States. He has been in the United States since 2001. He is a naturalized citizen. His children were born in the United States and reside in the United States. His home is in the United States.

Applicant's work as an interpreter and cultural advisor supported the U.S. military mission in Afghanistan, not the work of those who seek to destroy the growing democracy in Afghanistan. The new Afghanistan government relies upon the United States for support, both financially and militarily, as it moves forward with a new form of government. While Afghanistan's human rights record under the Taliban was dismal and serious problems continue, its human rights record is slowly improving. Applicant has worked as an interpreter with the U.S. military. There is no evidence that Applicant or his family has been pressured by any organization to provide any type of information, classified, or otherwise, to the United States.

In every case where a family member lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation, pressure, or coercion is established. Applicant has ties to the United States and strong ties to his family in Afghanistan. He wants to help the United States in its role in the redevelopment of Afghanistan. Applicant has sent significant sums of money to his brother in Afghanistan. However, Applicant's ties with Afghanistan are not minimal. The totality of the facts raise security concerns.

Applicant's response to the FORM emphasized that his children were born and raised in the United States. They are his family. Neither he nor his family are interested in going back to Afghanistan to live. However, the extent of his current contact with his extended family in Afghanistan is not clear. He now states that he has no contact since working in Afghanistan. He also denies that his brothers now work for the Afghan Government. His brothers may return to their employment with the Afghan Government and he may resume his frequent contact with them. Afghanistan remains dangerous and unpredictable. Applicant has given conflicting information about the number of contacts he has with his family. He is silent about the amount of contacts his wife has with her family. He did not document when various family members are coming to the United States as sponsored person. Given the information, it is not clear that Applicant can be



expected to resolve any potential conflict of interest in favor of the United States. He has not established mitigation of the foreign influence security concerns.

### **Whole-Person Concept**

Under the whole-person concept, an 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. An 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.

The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his or her ties to a foreign country; his or her social ties within the U.S.; and, many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Certain circumstances weigh against Applicant in the whole-person analysis. First, Applicant's extended family members are citizens and residents of Afghanistan. He reports frequent contact with them. He also noted that three brothers worked in positions for the Afghan Government. His wife also has family in Afghanistan. Terrorists or agents of the Taliban could attempt to use Applicant's family to obtain information. These connections raise the possibility of foreign influence. In this case, the foreign connection is substantial. Applicant sends money to his favorite brother. Applicant started working in Afghanistan in 2012, and asserts that he no longer has frequent contact with family living in Afghanistan. Applicant's spouse and children are all U.S. citizens and residents in the United States. Applicant supplemented the record but did not submit sufficient mitigating information.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there. Afghanistan is a dangerous place because of the violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the Afghan Government, the interests of the United States, U.S. Armed Forces,

and those who cooperate with and assist the United States. The United States and Afghanistan are allies in the war on terrorism. The United States is committed to the establishment of a free and independent Afghan Government. Afghanistan and the United States have close relationships in diplomacy and trade.

Some mitigating evidence weighs in favor of granting Applicant a security clearance. He is a naturalized U.S. citizen and has served the U.S. Army as a linguist in Afghanistan. He has character references. He is a mature person who has lived in the United States and created a life for himself. He has no desire to live in Afghanistan. He wants to continue his career serving the Government.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to foreign influence. The complicated state of affairs in Afghanistan places a significant burden on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. Applicant has not met that burden.

### **Formal Findings**

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Foreign Influence:	AGAINST APPLICANT
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Subparagraphs 1.a-1.f:	Against Applicant
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### **Conclusion**

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

Noreen A. Lynch  
Administrative Judge