



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00352
	)	
Applicant for Security Clearance	)	

**Appearances**

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

12/04/2013

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**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on October 31, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 12, 2013, detailing 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on August 20, 2013. He submitted a notarized, written response to the SOR allegations dated August 23, 2013, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on October 8, 2013. Applicant received the FORM on November 5, 2013. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated November 5, 2013. DOHA assigned this case to me on November 22, 2013. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

### **Request for Administrative Notice**

Department Counsel submitted a request that I take administrative notice of certain facts relating to Afghanistan. The request and the attached documents were not admitted into evidence, but were included in the record as Administrative Exhibit 1, I-IX. The facts administratively noticed are limited to matters of general knowledge and to matters not subject to reasonable dispute and are set out in the Findings of Fact below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 1.c of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.d of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 28 years old, seeks employment as a linguist for a DOD contractor. He applied for this position in October 2012. His position will require him to work with United States military forces in Afghanistan. Applicant speaks Phastu and English. His translation and communication skills, as well as his written skills, will assist his unit members in their mission and work with the Afghan national police and Army.<sup>2</sup>

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>Item 5.

Applicant was born and raised in Afghanistan, where he graduated from high school. Applicant and his wife married in 2007 in Afghanistan. They have a three-year-old son, who was born in the United States and resides in the United States. Applicant attended college in the United States for one year, but did not receive a degree.<sup>3</sup>

Applicant's wife became a United States citizen in 2008. Through her, the United States granted him a spouse-sponsored visa. He immigrated to the United States in 2009 and became a United States citizen in 2012. He indicated on his e-QIP that he continued to be a citizen of Afghanistan after becoming a United States citizen and held an Afghan passport. Applicant gave his Afghan passport to his employer for destruction. He has not formally renounced his Afghan citizenship. Since arriving in the United States, he has not traveled to Afghanistan or any other foreign country.<sup>4</sup>

Applicant worked as a bookkeeper in a real estate business in Afghanistan from 2001 until early 2009 when he immigrated to the United States. After arriving in the United States, he worked as a child care coordinator, as a teaching assistant, as a grounds keeper, and as a cook in the fast food industry.<sup>5</sup>

Applicant's father, mother, two younger brothers, and six younger sisters are citizens and residents of Afghanistan. He also maintains contact with two uncles, who are citizens and residents of Afghanistan. His mother-in-law is a naturalized United States citizen, living in the United States. His father-in-law is deceased. Applicant's other in-laws are citizens and residents of the United States. His aunt is a citizen of Afghanistan and a resident of the United States with a permanent resident card (green card). He speaks with his various family members on average once a month.<sup>6</sup>

Applicant's father and first younger brother work with his uncle in a real estate business in Afghanistan. His mother is a housewife. His youngest brother is a student. His sisters live at home. He does not state whether any of them goes to school. His remaining uncle owns and operates a produce store. There is no evidence that Applicant's family members are politically active, work for the Afghan government, or are involved with terrorist organizations.<sup>7</sup>

Applicant does not have any financial interests or bank accounts in Afghanistan. He does not receive any income from nor does he owe any money to foreign businesses, persons, groups, organizations, or governments. He owes no duty to any foreign businesses, interests, governments, organizations, or people. Applicant never

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<sup>3</sup>*Id.*

<sup>4</sup>Item 5 - Item 7.

<sup>5</sup>Item 5.

<sup>6</sup>Item 4; Item 5.

<sup>7</sup>Item 4.

served in the Afghan military nor is he willing to bear arms for the Afghan government. In the United States, he and his family live with his mother-in-law. His finances are well-managed. He does not drink alcohol for religious reasons, and he has never used drugs. Applicant does not have any interest in serving in the military for any country nor is he interested in politics. His brother-in-law and two friends work as interpreters for the United States military.<sup>8</sup>

Since 2011, Applicant has regularly sent, by Western Union, \$300 to his father to help support the family. He has also sent money to his uncle when his father is not available because his uncle lives with Applicant's family. This money is intended to support the family, which is poor. In October 2012, Applicant sent his aunt \$300 by Western Union on behalf of his mother, who did not have the proper identification to accept the money at the Western Union office. Applicant provided the money for his mother to receive medical care.<sup>9</sup>

Applicant has two email accounts. One account is in his name and the other account uses a first name which has no connection to Applicant and his uncle's last name. Applicant stated that he opened this account because prospective employers would not send email to his other account. He did not explain to the investigator the reason for a different name on this account, although he listed the account as a business contact with his answer to the SOR. He told the investigator that he did not use this account.<sup>10</sup>

In his response to the form, Applicant stated that his contact with his family in Afghanistan will not have a negative influence on him. He does not support extremism. He does not view his family in Afghanistan as a threat to the United States. He would not help anyone who wanted "to do something bad", and he would not advocate against the United States.<sup>11</sup>

## **Afghanistan**

I take administrative notice of the following adjudicative facts. Afghanistan is an Islamic Republic and emerging democracy. With the support of the United States and other nations, its new government endeavors to build a new system of government and to rebuild the country's infrastructure. Its army and police force are well trained. It continues to face significant challenges from the insurgency and terrorist organizations supported by the ousted Taliban and Al Qa'ida. Security and violence remain serious issues. The government is not complacent about the terrorist threat, the insurgency, or security issues; rather, it actively seeks to eliminate all with the assistance of the United

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<sup>8</sup>Item 4.

<sup>9</sup>Item 7.

<sup>10</sup>Item 4; Item 7.

<sup>11</sup>AE A.

States and NATO. The new government is working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community, has signed a “Good Neighbor” declaration with the six nations bordering it, and promotes regional cooperation. The United States supports the emergence of a broad-based government in Afghanistan and has made a long-term commitment to help Afghanistan rebuild itself. Some time ago, the leaders of both countries concluded a strategic partnership agreement committing to a long-term relationship between both countries, which was signed on May 2, 2012. Despite its differences with the United States, Afghanistan continues to seek United States support as it moves forward towards democracy and stability. None of the documents offered in support of the request for administrative notice indicate whether Afghanistan is an active collector of intelligence information.<sup>12</sup>

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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. 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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<sup>12</sup>Administrative Exhibit 1.

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 an applicant may deliberately or inadvertently fail to protect or 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 Executive Order 10865 provides that 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**

AG ¶ 6 expresses the security concern regarding foreign influence:

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 United States 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.

AG ¶ 7 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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.

Applicant's wife, son, and mother-in-law are citizens and residents of the United States. Applicant's aunt is also a permanent United States resident, who lives in the United States. Thus, no security concern is raised by these family members. Applicant regularly talks by telephone with his family members, who are citizens and residents of Afghanistan. Applicant maintains a normal familial relationship with these family members in Afghanistan. He has not returned to Afghanistan since he left in 2009. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members who may be threatened by terrorists.

In determining if such a heightened risk exists, I must look at Applicant's relationships and contacts with his family, as well as the activities of the Government of Afghanistan and terrorist organizations within Afghanistan. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his family in Afghanistan raise a heightened risk and a security concern because the activities of terrorists organizations, particularly the Taliban. The evidence of record fails to show that the Afghan government targets United States citizens in the United States or in Afghanistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Afghan government will seek classified information is minimal. The same cannot be said for terrorist organizations.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of United States interests. In determining if Applicant's contacts in Afghanistan cause security concerns, I considered that Afghanistan and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the Afghan government targets United States citizens for protected information, but the terrorist threat is real. The human rights issues continue to be a concern. While none of these considerations by themselves disposes of the issue, all are factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family in Afghanistan. Applicant's contacts with his family raise a heightened risk under AG ¶¶ 7(a) and 7(b).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and the following are potentially applicable:

- (a) 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 United States; and

(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the United States interest.

Applicant has a normal relationship with his parents, his sisters, and his brothers. It is unknown what his family members know about his intention to work as an interpreter and linguist for a DOD contractor. His communications with his family in Afghanistan are limited and create little likelihood for foreign influence or exploitation. His parents, his brothers, and his sisters do not work for the Afghan government, and they do not have any contact with government officials. It is unlikely that the Government of Afghanistan would target them to pressure Applicant for classified information, and thus, Applicant would not be placed in a position of having to choose between the interests of Afghanistan and the interests of the United States. Applicant views his job as supporting the United States. Outside of his family, his ties to Afghanistan are nonexistent as Applicant does not own property, bank accounts, or other assets in Afghanistan. He does not receive any benefits from Afghanistan. He does provide financial support to his large family in Afghanistan in the amount of \$300 a month. This financial support stems from long-instilled family and cultural obligations, not loyalty to the Taliban or the Afghan government. His contacts in Afghanistan do not show that he would chose the interests of Afghanistan over the interests of the United States. In reviewing all the evidence of record, there is little likelihood that Applicant's family in Afghanistan are a security risk. Applicant has mitigated the security concerns about his family in Afghanistan under AG ¶¶ 8(a) and 8(b).

### **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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. After he married, Applicant moved to the United States to live with his wife. Within three years, he became a United States citizen. He has not returned to Afghanistan since he left, but maintains contact with his family in Afghanistan, and as is his cultural obligation, he has provided financial support to them because they have little money. He gave up his Afghan passport and is willing to formally renounce his Afghan citizenship. He considers the United States his home. He wants to support the United States effort and hopes for an improved Afghanistan. He only has a United States passport for travel.

Applicant never served in the Afghan army. His family members live quietly and work daily in their private businesses. They are not involved with the Afghan government and do not appear to be aware that he seeks to work as an interpreter in Afghanistan. In considering all the evidence of record, I find that he would place the interests of the United States over the interests of his family in Afghanistan if there were any threats. The Government questions the relevance of a second email address used by Applicant for business purposes, but did not raise this issue in the SOR. Applicant disclosed this account to the Government. Without Applicant's disclosure, the Government would not have known about the account. Applicant's actions eliminated any concern about the account.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his Foreign Influence under Guideline B.

## 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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.

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MARY E. HENRY  
Administrative Judge