



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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XXXXXXXXXXXXXXXXXX ) ISCR Case No. 13-00375  
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 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ms. Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

01/23/2014

**Decision**

HOWE, Philip S., Administrative Judge:

On May 26, 2010, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On August 1, 2013, the Department of Defense issued to Applicant a Statement of Reasons (SOR) 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; 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 on September 1, 2006.

Applicant answered the SOR in writing on September 29, 2013. Applicant admitted the two allegations. Applicant requested his case be decided on the written record in lieu of a hearing.

On October 23, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on October 29, 2013. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on November 18, 2013. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on December 18, 2013. Department Counsel had no objection to the inclusion of these documents in the case, which I marked as Exhibit A to the Response.

I received the case assignment on December 12, 2013. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

#### **Motion to Amend SOR**

On my own motion I amended Subparagraph 1.a of the SOR to add the second sister Applicant listed in his e-QIP. The sentence now reads, "Your brother and sisters are citizens and residents of Afghanistan." I made this amendment to conform the SOR allegation to the evidence present in the document in the case file.

#### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Afghanistan. The request and the attached documents were submitted as part of the FORM. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted the allegations in Subparagraphs 1.a and 1.b. (Items 1, 4-7)

Applicant is 49 years old. He was born in Afghanistan in 1964. Applicant immigrated to the United States in 1988. He became a naturalized U.S. citizen in 1995. Applicant has a high school education. He has worked for a defense contractor as a

linguist since 2010. Applicant is fluent in three foreign languages. (Items 1, 4-7; Response)

Applicant's parents are deceased. He is married and has four children. His wife and children live in the United States. His wife and children are U.S. citizens by naturalization (his wife and oldest child) and by birth (the younger three children). Applicant has one living brother and two living sisters. Two brothers are deceased. His sisters were born in 1951 and 1954. His parents-in-law are also deceased. (Items 5, 7)

Applicant admits in his Answer that his brother and two sisters are citizens and residents of Afghanistan (the SOR alleges one sister but the e-QIP lists two sisters). He also admits that his sister-in-law is a citizen and resident of Afghanistan. Applicant stated in his Answer that his brother is over 50 years of age, having been born in 1962. He also declared his sisters are more than 60 years old. All of his siblings were born and raised in Afghanistan. Applicant asserts none of his siblings have any foreign contacts, financial issues, or any foreign entanglements. They also allegedly have no political affiliation. Applicant speaks with them by telephone every two months. He also indicated that he speaks with one of his sisters about every 30 days, according to his information disclosed on his interview form. (Items 4-7)

Applicant states his sister-in-law is married to his brother. Applicant claims she does not have any political affiliation or foreign connections. He speaks with her every three months. (Item 4)

Applicant submitted a recommendation dated September 22, 2013, from his team leader stating he has high integrity. This author supports Applicant's request for a security clearance. (Item 4)

Applicant also submitted nine additional recommendation letters with his Response. These letters were from medical personnel with whom he worked in Afghanistan translating for them in clinics with Afghan Army personnel and patients. These nine authors all attest to Applicant's competency, integrity, and hard work. They recommend him for continued employment as a linguist. He included six certificates of service and/or appreciation from military organizations for his work in Afghanistan for the U.S. Army. (Item 4; Response' Exhibit A)

I could not judge Applicant's credibility or his assertions about his family member's non-involvement in local politics, political affiliation, foreign entanglements, or foreign contacts because he did not appear before me at a hearing. He made these statements in his various documents submitted as part of his Answer and Response.

## **Afghanistan**

I take administrative notice of the facts set forth in the Afghanistan documents. Afghanistan is a country in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia in the north. It is a rugged and mountainous country, which has been fought over by powerful nations for centuries. It has about 18 million people.

Afghanistan is presently an Islamic Republic that has had a turbulent political history, including an invasion by the Russians in 1979. After an Accord was reached in 1989 and Russia withdrew from the country, fighting continued among the various ethnic, clan and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001.

The new democratic Government took power in 2004 after a popular election. Despite that election, terrorists and the Taliban continue to assert power and intimidation within the country.

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. No section of Afghanistan is safe or immune from violence. The U.S. Department of State Human Rights 2010 Report states that 20 schools were attacked from March to October 2009 and 126 students killed by the Taliban. Teachers are threatened by the Taliban. (Source documents include U.S. Department of State 2011 and 2012 country and human rights reports, 2012 U.S. Department of State Afghanistan Fact Sheet, 2012 Country Report on Terrorism from the National Intelligence Office and U.S. Department of Defense reports)

### **Policies**

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

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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. 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 concerns 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 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.

AG ¶ 7 describes two conditions that could raise a security concern and may be disqualifying 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;

(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 is a naturalized U.S. citizen. His brother, two sisters, and one sister-in-law are citizens of and live in Afghanistan. Living in Afghanistan creates a heightened risk for his relatives because he is a U.S. citizen who speaks with them frequently each year. He works for the U.S. Army as a linguist in Afghanistan. Such people as his relatives could be primary targets of the Taliban insurgent attacks.

These family members who reside in Afghanistan raise security concerns under AG ¶ 7(a) and (b) because of the heightened risk caused by Applicant's work.

AG ¶ 8 provides three conditions that could mitigate security concerns raised under this guideline:

(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 U.S.;

(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; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.<sup>1</sup>

Applicant's siblings and one spouse live in Afghanistan. Afghanistan raises a security concern because of the Taliban insurgency. The conditions in Afghanistan are volatile and dangerous. This situation exists because of the significant terrorist presence and threat there. The security situation in Afghanistan is tenuous, according to the U.S. State Department. Applicant's connection to his brother and sisters could place Applicant in a position to have to choose between that relationship and his duty to the United States. AG ¶ 8 (a) does not apply.

Applicant has worked for the past three years as a linguist for a U.S. Army contractor. His services are used in the medical care and training field. His work is highly recommended by nine colleagues or superiors who submitted recommendation documents.

Applicant immigrated to the United States in 1988. He became a naturalized U.S. citizen in 1995. While his family is living in the U.S., there is no information about any other close connections with the U.S. to counterweigh Applicant's familial ties with his siblings in Afghanistan. Therefore, AG ¶ 8 (b) does not apply fully.

Contact by Applicant with his relatives in Afghanistan every 30 to 60 days is not casual or infrequent, so there is a risk of foreign influence. AG ¶ 8(c) does not apply.

### **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

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<sup>1</sup> The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Several factors weigh against granting Applicant a security clearance. First, there is a significant risk of terrorism and human rights abuses in Afghanistan. More importantly for security purposes, terrorists hostile to the United States actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's brother and sisters, to obtain such information. Finally, his family members with whom he maintains frequent contact are resident citizens of Afghanistan.

The Directive provides that, "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." (AG ¶ 2 (b)) Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Foreign Influence. I conclude the whole person concept against Applicant.

### **Formal Findings**

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

## **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.

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PHILIP S. HOWE  
Administrative Judge