



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



In the matter of: )  
)  
) ISCR Case No. 13-00509  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

05/09/2014

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record in this case, I conclude that Applicant mitigated the Government’s security concerns under Guideline C, Foreign Preference, and Guideline E, Personal Conduct. However, he failed to mitigate security concerns under Guideline B, Foreign Influence. His eligibility for a security clearance is denied.

**Statement of the Case**

Applicant signed and certified an electronic questionnaire for investigation processing (e-QIP) on March 6, 2012. On July 12, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, Foreign Preference; Guideline B, Foreign Influence; and Guideline E, Personal Conduct. DOD acted 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 (AG) effective within DOD for SORs issued after September 1, 2006.

On August 11, 2013, Applicant answered the SOR and requested a decision without a hearing from an administrative judge at the Defense Office of Hearings and Appeals (DOHA). The Government compiled its File of Relevant Material (FORM) on March 14, 2014.<sup>1</sup> The FORM contained documents identified as Items 1 through 10. Additionally, in the FORM, the Government requested that the administrative judge take administrative notice of certain facts about Afghanistan.<sup>2</sup>

On March 14, 2014, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on April 6, 2014. His response was due on May 6, 2014. Applicant timely filed additional information in response to the FORM. On April 24, 2014, the case was assigned to me for a decision.

Department Counsel objected to documents in the German language included in Applicant's response to the FORM.<sup>3</sup> Additionally, Department Counsel objected to an unauthenticated translation of one of the documents into English, and he noted that it was not possible to identify which of the German language documents had been the subject of the translation. I marked all documents provided by Applicant in his response to the FORM as Item A, and I admitted them to the record. However, I sustained Department Counsel's objection to the German language documents and the unauthenticated translation into English of one of the German language documents. I will not consider those documents in this decision.

### **Findings of Fact**

The SOR contains five factual allegations under AG C, Foreign Preference (SOR ¶¶ 1.a. through 1.e); nine factual allegations under AG B, Foreign Influence (SOR ¶¶ 2.a. through 2.i.); and two factual allegations under AG E, Personal Conduct (SOR ¶¶ 3.a. and 3.b.). Applicant provided two sets of answers to the SOR. In one set of answers, Applicant answered briefly by writing "I Admit" or "I Deny."<sup>4</sup> In his second set of answers, Applicant provided more detailed responses. Taken together, the two sets of answers reveal the following: Applicant admitted three Guideline C allegations (SOR ¶¶ 1.b., 1.c., and 1.d). He denied the Guideline C allegation at SOR ¶ 1.a. He admitted and denied the allegation at SOR ¶ 1.e. (Item 1; Item 4.)

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<sup>1</sup> The FORM is incorrectly dated March 14, 2013. The correct date for the FORM is March 14, 2014. (FORM.)

<sup>2</sup> The Government provided a summary document, drawn from six official U.S. documents, containing facts about Afghanistan. I marked the Government's administrative notice summary as Hearing Exhibit (HE) A and entered it in the record without objection.

<sup>3</sup> Department Counsel's memorandum of objection is marked as HE B.

<sup>4</sup> In his shorter answer to the SOR, Applicant neither admitted nor denied the allegation at SOR ¶ 1.d. In his longer response, he admitted the allegation. (Item 4.)

Applicant admitted all nine Guideline B allegations. He initially denied the Guideline E allegation at ¶ 3.a., and he admitted the allegation at ¶ 3.b. However, in his more detailed answer, Applicant denied both Guideline E allegations and provided additional information. Applicant's admissions are entered as findings of fact. (Answer to SOR.)

After a thorough review of the record in the case, including exhibits, relevant policies, and the applicable adjudicative guidelines, I make the following additional findings of fact:

Applicant, who is 66 years old, was born and raised in Afghanistan. Applicant is employed as a linguist by a government contractor, and he seeks a security clearance. (Item 6.)

Applicant is married and the father of five living children, all of whom are adults. In about 1990, a sixth child, a son, was killed by communist forces in Afghanistan for teaching English to Afghan soldiers, a fact incorporated in SOR ¶ 2.i. (Item 6; Item 8.)

Three of Applicant's children are U.S. citizens and reside in the United States. One child is a citizen and resident of the United Kingdom. Applicant's wife and a fifth child are citizens of Afghanistan and reside in the United States, facts which are incorporated in SOR ¶ 2.a. (Item 6; Item 8.)

Applicant's mother-in-law and brother-in-law are citizens and residents of Afghanistan. Applicant's brother-in-law served as an officer in the Afghan army. These facts are incorporated in SOR ¶¶ 2.b., 2.c., and 2.d. (Item 6.)

During a counterintelligence interview, Applicant stated his concern that his life could be in danger if he worked in Afghanistan. He stated that if his wife's family told anyone in the Afghan community that Applicant was employed by U.S. forces, he would be considered an infidel and might be captured or killed. These facts are incorporated in SOR ¶ 2.h. (Item 7.)

Applicant owns a home in Afghanistan with an estimated value of \$100,000. He and his wife stay in the home when they visit Afghanistan. These facts are incorporated in SOR ¶¶ 2.e. and 2.f. (Item 4.)

Applicant also has a bank account in Afghanistan, which he opened to provide for the upkeep of his home. He opened the account in about 2004 with a deposit of \$8,000. He estimates that his current balance is less than \$225. This information is alleged at SOR ¶ 2.g. (Item 4; Item 8; Item 9.)

Applicant came to the United States for the first time in 1967. He attended a six-month course at a U.S. university, and he returned to Afghanistan, where he was employed until about 1988.

In 1980, Applicant was imprisoned and tortured by communist government security forces because he had worked with Americans. His wife paid \$30,000 to the authorities so that Applicant could be released from prison. (Item A.)

In 1988, Applicant traveled with his wife to an Asian country where she sought medical treatment. While in the Asian country, Applicant obtained work with an international organization. When he and his wife returned to Afghanistan in 1989, he continued his work for the international organization. In 1994, he was assigned by the international organization to a position in another Asian country, where he worked for about four years. (Item 7.)

During a security interview, Applicant stated that while working in the Asian country for four years, he applied for refugee status to 32 countries. Several countries denied his request because of his prior education and residency in the United States. Applicant told the interviewer that the United States was not his first choice when applying for refugee status. In 1998, he was assigned by the international organization to work in the United States. This information is alleged at SOR ¶ 1.a. The interviewer concluded that Applicant's many applications for refugee status raised a question about his loyalty. (Item 7.)

Applicant entered the United States on a nonimmigrant visa for international employees. He applied for refugee status but was denied because he was in the United States legally. In 1999, he was granted asylum in the United States. He became a U.S. permanent resident in 2004. (Item 7.)

Applicant returned to Afghanistan in 2003 and was employed there by the Afghan government until May 2004. In November and December 2006, Applicant worked as a consultant in Pakistan. For five months, from July to December 2008, Applicant worked for an element of the Afghan government. These facts are alleged at SOR ¶¶ 1.b., 1.c., and 1.d. (Item 6; Item 7.)

In 2009, Applicant became a naturalized U.S. citizen. He relinquished his Afghan passport in November 2009. (Item 6; Item 7.)

During a security interview, Applicant told an investigator that when he went, as a U.S. citizen, to relinquish his Afghan passport in 2009, he disclosed that he was seeking employment with the U.S. Government. Applicant reported to the investigator that he asked the Afghan official for a job with the Afghan government and expressed his willingness to retain his foreign passport. This information is alleged at SOR ¶ 1.e. The investigator concluded that Applicant's willingness to work for a foreign government reflected on his loyalty and character. In his short answer to the SOR, Applicant admitted this conduct. However, in his longer answer, he denied it. (Item 4; Item 7.)

During a security interview, Applicant told an investigator that he and his wife kept their money in a safe place in their home and not in a bank account because they wanted to claim eligibility for free Government health care. He stated that when

individuals apply for free health care, their bank accounts are checked, and they did not want to reveal how much money they had because they were afraid that their income might be too high to qualify for the free care. This information is alleged at SOR ¶ 3.a. (Item 7.)

In his answer to the SOR, Applicant denied telling the investigator that he kept money at home in order to misrepresent the size of his income and thereby qualify for medical benefits. He pointed out that he and his sons gave his wife money to manage their household, and she kept the money in a purse. He stated, however, that when he is unemployed, he and his wife seek medical care at a free clinic. (Item 4.)

In his response to the FORM, Applicant again denied that he hid his money in his house to qualify for free health care. He asserted that when he is employed his paychecks are deposited in his bank account. (Item A.)

Applicant was employed as a government contractor for approximately two months in 2010. During a security interview, he told an investigator that his coworkers accused him of falling asleep on the job, and he left the job for medical reasons. These facts are alleged at SOR ¶ 3.b. In his answer to the SOR, Applicant further explained that he suffered a stroke while working overseas for the contractor and was evacuated and treated for a medical condition which apparently precluded his return to work overseas for a period of time. He provided letters of support and certificates of appreciation from the military commanders overseas with whom he worked in 2012. (Item 7; Item 4; Item A.)

On his e-QIP, Applicant reported that he had traveled to Afghanistan to visit family and friends in 2005, 2006, and 2010. In 2011, he visited Afghanistan twice to visit family and friends. Applicant also reported the following periods of unemployment: December 2006 to March 2007, May 2007 to July 2008, January 2009 until February 2010, and June 2010 to March 2012. During his unemployment, he was supported by one of his sons. (Item 4; Item 7.)

I take administrative notice of the following facts about Afghanistan. The facts in the following summary were provided by Department Counsel to Applicant and to me. I have omitted the footnotes provided in the original summary document, and I have, in part, paraphrased Department Counsel's summary.

## **AFGHANISTAN**

The conclusion of virtually every Administration and outside assessment has been that Afghan central governmental capacity and effectiveness has increased, but that local governance remains weak and all levels of government are plagued by governmental corruption.

Afghanistan's national institutions continue to improve their ability to provide constitutional, stable, effective, and responsive governance, but still face sizable

challenges. Corruption, ineffective program monitoring, budget shortfalls at all levels, inability to generate revenue, and limited public financial management capacity continue to plague the national government.

The convergence of insurgent, terrorist, and criminal networks is pervasive and threatens Afghanistan's stability. Criminal networks, insurgent groups, and corrupt government officials are often interlinked via multi-layered connections, making ties between the officials and criminal activity difficult to prove and prosecute. These factors all contribute to popular disaffection with the government and create opportunities for the insurgency.

Security in Afghanistan is challenged by several armed groups, loosely allied with each other. The core insurgent faction in Afghanistan remains the Taliban movement. Another militant faction, cited by U.S. officials as perhaps the most potent threat to Afghan security, is the "Haqqani Network," which the Administration reported to Congress meets the criteria for FTO [Foreign Terrorist Organization] designation in September 2012. A major Pakistani group, the Pakistani Taliban (which the State Department designated as a FTO in September 2010), supports the Afghan Taliban and some of its fighters are operating from safe havens in Taliban-controlled areas on the Afghan side of the border. Another Pakistani group said to be active inside Afghanistan is Lakshar-e-Tayyiba (LET), which some assess as also active in South Asia and elsewhere, and could rival Al Qaeda or Al Qaeda affiliations as potential threats to U.S. interests.

A major concern, particularly during 2012, [were] "insider attacks" (attacks on ISAF forces by Afghan security personnel, also known as "green on blue" attacks). These attacks, some of which apparently were carried out by Taliban infiltrators into the Afghan forces, declined by late 2012 but . . . continued occasionally in 2013.

In 2012, insurgents conducted some of the largest vehicle-borne improvised explosive device attacks since 2001, targeting Provincial Reconstruction Teams, large Coalition Forces (CF) bases, and Afghan government buildings, mostly in eastern Afghanistan. Insurgents across Afghanistan used a variety of tactics to target Afghan security personnel and CF in well-coordinated, complex attacks in major cities and rural areas, seeking to expand their territorial influence and control.

The most significant human rights problems included credible reports of torture and abuse of detainees by Afghan security forces; widespread violence, including armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; pervasive official corruption; and endemic violence and societal discrimination against women and girls. Corruption is endemic throughout society, and . . . money from the military, international donors, and the drug trade continue[s] to exacerbate the problem.

Other human rights problems included extrajudicial killings by security forces; poor prison conditions; ineffective government investigations of abuses and torture by

local security forces; arbitrary arrest and detention, particularly of women accused of so-called "moral crimes"; prolonged pretrial detention; judicial corruption and effectiveness; violations of privacy rights; restrictions on freedom of speech and of the press; restrictions on freedom of religion; limits on freedom of movement; underage and forced marriages; abuse of children, including sexual abuse; discrimination and abuses against ethnic minorities; trafficking in persons; discrimination against persons with disabilities; societal discrimination based on race, religion, gender, sexual orientation and HIV/AIDS status; abuse of worker rights; and sex and labor trafficking.

The Department of State warns U.S. citizens against travel to Afghanistan and warns that the security threat to all U.S. citizens in Afghanistan remains critical. No province in Afghanistan should be considered immune from violence, and the potential exists throughout the country for hostile acts, either random or targeted, against U.S. and other Western nationals at any time. Travel in all areas of Afghanistan remains unsafe due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of insurgent attacks, including attacks using vehicles or other improvised explosive devices (IEDs). The security situation remains volatile and unpredictable. There is an ongoing and significant risk of kidnaping and assassination of U.S. citizens and non-governmental organization (NGO) employees. Kabul City and its suburbs are also considered at high risk for militant attacks, including rocket attacks, vehicle-borne IEDs, direct-fire attacks, and suicide bombings.

The Department of State also warns that, in addition to being subject to all Afghan laws, Afghan-Americans may also be subject to other laws that impose special obligations on Afghan citizens. U.S. citizens who are also Afghan nationals do not require visas for entry into Afghanistan. Likewise, for U.S. passport holders born in Afghanistan, a visa is not required for entry. For these individuals, the Embassy of Afghanistan issues a letter confirming nationality for entry into Afghanistan.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no 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 have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's 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.

When evaluating an applicant's suitability for a security clearance, an 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 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, the administrative judge applies these guidelines 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in obtaining a favorable security 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.

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 C, Foreign Preference**

Under AG ¶ 9, the security concern involving foreign preference arises "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over



the United States.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes several conditions that could raise a security concern and may be disqualifying. These disqualifying conditions are as follows:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant sought asylum status from many countries when his native country was at war. In 1999, he was granted refugee status in the United States, and he obtained permanent resident status in 2004. Then, in November and December 2006, he accepted employment as a consultant in Pakistan, and for about five months in 2008, he was employed as consultant to an element of the Afghan government. After becoming a U.S. citizen in 2009, Applicant expressed an intent to relinquish his Afghan passport. The SOR alleges that Applicant told an Afghan embassy official that he would

retain his Afghan passport if he could work at the embassy. Applicant denied the allegation. He relinquished his Afghan passport.

While he held permanent resident status, Applicant performed duties that served the interests of a foreign organization or government. His actions raise a security concern under AG ¶ 10(c).

Five mitigating conditions are applicable to allegations under the Foreign Preference adjudicative guideline. Under AG ¶ 11(a), dual citizenship might be mitigated if “it is based solely on [an applicant’s] parents’ citizenship or birth in a foreign country.” Under AG ¶ 11(b), an individual’s dual citizenship might be mitigated if he or she “has expressed a willingness to renounce dual citizenship.” Under AG ¶ 11(c), an individual’s “exercise of the rights, privileges, or obligations of foreign citizenship might be mitigated if it occurred before becoming a U.S. citizen or when the individual was a minor.” Under AG ¶ 11(d), an individual’s use of a foreign passport might be mitigated if it were “approved by the cognizant security authority.” Under AG ¶ 11(e), an individual’s use of a foreign passport might be mitigated if he or she presents credible evidence that “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”

None of those mitigating conditions applies to the facts of this case. However, it must also be noted that Applicant’s work as a contractor for a foreign government and for an element of a foreign government occurred before he became a naturalized U.S. citizen. Since becoming a citizen of the United States, Applicant has not performed or attempted to perform duties to serve the interests of a foreign group or government that might conflict with national security interests. I conclude the Guideline C allegations for Applicant.

### **Guideline B, Foreign Influence**

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶ 6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

A Guideline B decision assessing the security worthiness of a U.S. citizen with close familial contacts in Afghanistan must take into consideration the unstable political situations in Afghanistan in which terrorist groups target U.S. interests. Under these

circumstances, American citizens with immediate family members who are citizens or residents of Afghanistan could be vulnerable to coercion, exploitation, or pressure.

I have considered all of the disqualifying conditions under the foreign influence guideline. The facts of Applicant's case raise security concerns under disqualifying conditions AG ¶¶ 7(a), 7(b), 7(d), and 7(e).<sup>5</sup>

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. However, the facts must demonstrate a risk higher than normally occurs when a family member lives under a foreign government. The activities of al-Qa'ida, Taliban, and other militant groups in Afghanistan, and the country's mixed record of dealing with these groups, are sufficient to establish the "heightened risk" required in AG ¶ 7(a).

Applicant has been affected by the long years of war and turmoil in Afghanistan. In 1990, one of his sons was killed by communist soldiers for teaching English to Afghan soldiers. In his answer to the SOR, Applicant admitted that his wife and one of his sons are citizens of Afghanistan and resident in the United States. Applicant's mother-in-law and brother-in-law are citizens and residents of Afghanistan. The brother-in-law was an officer in the Afghan army. Applicant resides in the United States with his wife.

Applicant owns a home in Afghanistan which he has valued at \$100,000. He also maintains a small bank account in Afghanistan. When Applicant and his wife travel together to Afghanistan to visit family and friends, they reside in the home they own there. Applicant has traveled five times to Afghanistan to visit since 2005, even though he has stated that he would fear for his life if his wife's relatives knew he was working for U.S. Forces in Afghanistan.

When family ties to a foreign country are alleged, the totality of an applicant's family ties as well as each individual family connection must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant's close relationships and contacts with his family members who are citizens and residents of Afghanistan, a country with a poor human rights record and a high risk of terrorism, is sufficient to establish AG ¶¶ 7(a) and 7(b).

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<sup>5</sup> AG ¶ 7(a) reads: "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(b) reads: "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(d) reads: "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." AG ¶ 7(e) reads: "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation."

Moreover, Applicant shares living quarters with his wife, a citizen of Afghanistan, who also has family contacts with citizens and residents of Afghanistan. Applicant's familial relationships and contacts with his relatives and his wife's relatives create a heightened risk of foreign exploitation, inducement, manipulation, or coercion. Additionally, Applicant owns a home and a bank account in Afghanistan, which could also expose him to a heightened risk of foreign influence or exploitation.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply. If "the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual" then AG ¶ 8(f) might apply to Applicant's home and bank account in Afghanistan.

AG ¶ 8(a) does not apply in mitigation to the facts of this case. Applicant has immediate family members who are citizens of Afghanistan.

AG ¶¶ 8(b) and 8(c) also do not apply to this case. After becoming a permanent U.S. resident in 2004, Applicant spent time living and working in Pakistan and Afghanistan. Since becoming a U.S. citizen in 2009, he has traveled to Afghanistan with his wife to visit family and friends. Applicant's loyalty and sense of obligation to his family members is strong and enduring. From my careful review of the record in this case, it is clear that Applicant's relationships with his family members who are citizens of Afghanistan are neither casual nor infrequent. It is also not clear to me that Applicant would resolve any conflict of interest in favor of the United States.

Applicant owns a home in Afghanistan that he values at \$100,000. He also has a bank account in Afghanistan. It is not clear that Applicant's possession of these assets is routine or that he might not be required to leverage them to support himself and his family. These assets could be a source of conflict and they could be used to influence, manipulate, or pressure Applicant. Accordingly, I conclude that AG ¶ 8(f) does not apply in mitigation.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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.”

### **Guideline E, Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

During an interview with an authorized investigator, Applicant made statements about his money management and his reason for leaving his most recent job that the investigator concluded demonstrated questionable judgment and indicated that Applicant might not properly safeguard protected information. Applicant’s personal conduct raises security concerns under AG ¶ 16(c), which reads:

Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant denied both Guideline E allegations and provided additional information in rebuttal. I have carefully reviewed the Guideline E mitigating conditions, and I conclude that AG ¶ 17(f) applies to the facts of Applicant’s case. AG ¶ 17(f) reads: “the information was unsubstantiated or from a source of questionable reliability.”

The investigator’s report, while presumed to be reliable, contains insufficient record evidence about Applicant’s financial decisions and health record to substantiate a conclusion that Applicant may not properly safeguard protected information

### **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 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 the whole-person concept and all the facts and circumstances surrounding this case. Applicant first came to the United States in 1967 to study. When his country was at war, he was imprisoned and tortured. One of his sons was killed by Communist soldiers for teaching English to Afghan troops. Applicant later sought asylum or refugee status from several countries. He was granted refugee status in the United States in 1999, and he obtained permanent resident status in 2004. He became a U.S. citizen in 2009.

Since 2005, Applicant has traveled to Afghanistan five times. He owns a home in Afghanistan, and he and his wife stay in the home when they are in Afghanistan visiting friends and relatives. Applicant has stated that he would fear for his life if his wife's family members in Afghanistan learned he was working for U.S. Forces in Afghanistan.

Applicant is a devoted and loyal family member, and his contacts with his wife, son, mother-in-law, and brother-in-law, all of whom are citizens of Afghanistan, and close and enduring. The record in this case reveals foreign contacts and connections that continue to raise security concerns.

After weighing the disqualifying and mitigating conditions under Guideline C, Guideline B, and Guideline E, and after evaluating all the evidence in the context of the whole person, and mindful of my obligation to decide close cases in favor of national security, I conclude Applicant has failed to mitigate security concerns based on foreign influence. It is evident from the record in this case that Applicant has failed to carry his burden of persuasion to demonstrate that his foreign contacts and connections do not raise security concerns that could preclude entrusting him with sensitive and classified information.

### **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 C:	FOR APPLICANT
Subparagraphs 1.a. - 1.e.:	For Applicant

Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.h.:	Against Applicant
Subparagraph 2.i.:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a.- 3.b.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not 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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Joan Caton Anthony  
Administrative Judge