



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00538
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: Mogebe Weiss, Esq.

04/22/2014

**Decision**

HENRY, Mary E., Administrative Judge:

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

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on April 24, 2012 and May 29, 2012, and he completed and signed a Public Trust Position application on March 2, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 2, 2013, detailing security concerns under Guideline B, Foreign Influence, and Guideline E, Personal Conduct, This 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 9, 2013, and he signed his answer on August 23, 2013. Department Counsel requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on November 4, 2013. This case was assigned to another administrative judge on November 13, 2013. Because Applicant worked overseas, scheduling of a hearing date was delayed. DOHA transferred the case to me, and I received the case assignment on February 17, 2014. DOHA issued a Notice of Hearing on February 26, 2014, and I convened the hearing as scheduled on March 27, 2014. The Government requested that a letter of rights and obligations, dated January 22, 2014 and mailed to Applicant, be received as hearing exhibit (HE) 1. Applicant did not object, and HE 1 was received in the record. In its case in chief, the Government offered exhibits (GE) marked as GE 1 through GE 12. Applicant did not object to admission of GE 1 - GE 10 and GE 12, which were received and admitted into evidence. Applicant testified. He did not submit any exhibits at the hearing. I held the record open until April 3, 2014, for Applicant to submit additional matters. Applicant timely submitted exhibits (AE) A - AE E, which were received and admitted without objection. The record closed on April 3, 2014. DOHA received the hearing transcript (Tr.) on April 11, 2014.

## **Procedural and Evidentiary Rulings**

### **Motions**

At the hearing, Department Counsel moved to amend the SOR by striking SOR allegations 2.g and 2.h and to clarify SOR allegation 2.b by inserting the words "signed by you on April 24, 2012" after the word "e-QIP" and before the words "in response to Section 28". Applicant did not object to the amendment. The motion to amend the SOR was granted. SOR allegations 2.g and 2.h are stricken from the record, and SOR allegation 2.b is amended as requested. Applicant denied revised SOR allegation 2.b. (Tr. 7-10)

### **Evidence**

Applicant, through counsel, objected to the admission of GE 11 on the grounds that it lacked a foundation as the document was not notarized, and the author of the document was not in the hearing room. Because Applicant verified his signature on pages of the documents, Applicant's objection was overruled. GE 11 was admitted into evidence. (Tr. 23-25)

### **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 Hearing Exhibit 2, I-VI. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and they are set out in the Findings of Fact below.

## Prior Decision

Applicant applied for a security clearance in 2003. Security concerns arose under Guideline B, Foreign Influence, because one brother was a citizen and resident of Afghanistan, and Guideline E, Personal Conduct, for allegedly falsifying certain answers on his application. Administrative Judge Darlene Lokey Anderson conducted a hearing and issued a decision on April 26, 2006 (ISCR Case No. 04-11783). She concluded that Applicant mitigated the security concerns about his foreign influence, but that he did not mitigate the security concerns about his personal conduct because he falsified certain answers on his 2003 security clearance. In reaching her decision, the administrative judge reviewed the electronic version of Applicant's security clearance application, noting that this information came from a version which Applicant filled out by hand. The administrative judge concluded that Applicant falsified his answers to the following questions: 1) Question 6 because he failed to list his employment in Russia from 2001 until 2002 with a film company; Question 12 because Applicant failed to list his business and financial interest in the production of the movie in Russia; and 3) Question 13 because he did not list his 1998 bankruptcy. The administrative judge denied Applicant's security clearance eligibility. Applicant appealed the denial. The DOHA Appeal Board affirmed the administrative judge's denial of Applicant's security clearance after concluding that the administrative judge did not err in her findings of falsification on Questions 6 and 13. The Appeal Board concluded that the administrative judge erred in finding that Applicant falsified Question 12 because this question was written in the present tense and as of the date Applicant filled out the application, there was no evidence in the record that he was still involved in the film business. The favorable findings under Guideline B were not appealed. ISCR Case No. 04-11783 (App. Bd. Dec. 8, 2006). See GE 12.

## Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b and 1.c of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.d, and 2.a - 2.h of the SOR.<sup>1</sup> At the hearing, he again denied ¶ 2.b after clarification. 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.

---

<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).

Applicant, who is 60 years old, works as a linguist for a DOD contractor. Applicant began working for his current employer in April 2012. Applicant previously worked for a DOD contractor from September 2009 until October 2009, May 2009 until September 2009, and April 2003 until August 2005.<sup>2</sup>

Applicant was born in Afghanistan. He married in 1974, and he separated from his wife in 2003. They are not divorced. Applicant and his wife had one son, age 38, and four daughters, ages 35, 30 (twins), and 25. Applicant's wife, son, and three daughters were born in Afghanistan, and his youngest daughter was born in Pakistan. Applicant and his family fled Afghanistan in 1985 during the Russian occupation. They lived in Pakistan until December 1988 when they immigrated to the United States as refugees. Applicant became a United States citizen in 2000. His wife and children are naturalized United States citizens, with his son obtaining his citizenship on August 21, 2013. Applicant's son-in-law was born in Afghanistan and is currently a citizen of Afghanistan, living in the United States. His son-in-law has hired an attorney to help him through the United States citizenship process.<sup>3</sup>

Applicant's parents, one brother, a sister, and his wife's parents are deceased. One older brother is a citizen and resident of the United States. His remaining sibling, an older brother, is a citizen and resident of the United Kingdom. This brother previously served in a high-level position in the Afghan government for many years. He is now retired. In his 2003 security application, Applicant indicated that his brother was a citizen of Afghanistan. In all 2012 documents, Applicant identifies this brother's citizenship as the United Kingdom. Applicant does not know if this brother currently has dual citizenship with Afghanistan. Applicant talks with his brother four to six times a year.<sup>4</sup>

Applicant graduated from a university in Afghanistan in 1975. In the 1970s, Afghanistan required all young men to serve one year of mandatory military service after completing either high school or college. Applicant served in the Afghan National Army from March 1976 until March 1977, where he held the rank of soldier (the equivalent of a private first class) and served in the reporting office. He received an honorable discharge. After he completed his military service, he taught school until 1984.<sup>5</sup>

---

<sup>2</sup>GE 1; GE 2; GE 11.

<sup>3</sup>GE 1 - GE 3; GE9; GE 10; AE B; AE C; Tr. 29, 36, 38.

<sup>4</sup>GE 1; GE 2; GE 4; GE 7; GE 9; GE 10; Response to SOR.

<sup>5</sup>GE 1 - GE 3; GE 7; GE 9; GE 10.

At the time of his death many years ago, Applicant's father owned 32 acres of land<sup>6</sup> in Afghanistan. Applicant and his brothers agreed to sell the land. At the request of his two older brothers, Applicant traveled to Afghanistan in September 2010 to get permission to sell this land and to determine how to sell it. He never completed the paperwork necessary to start the sale nor did he list the property for sale. After four months in Afghanistan, he returned to the United States. He and his brothers are not currently attempting to sell the land because it is located in a dangerous area. Applicant places the present value of the land at approximately \$65,000. If it sells, he would want his share of the inheritance.<sup>7</sup>

Applicant submitted an application to a federal contractor to work as a role player on May 15, 2009. The signed application contains a certification which states as follows:

I understand that this application is neither an offer of employment nor part of an employment agreement. I understand that [company] is an "At Will Employer" and that if I become employed at a later time such employment may be terminated by either party at any time, for any reason not prohibited by law, without notice. . . .

Applicant also agreed to adhere to the company's policies and procedures should he become employed. On the same date, Applicant signed a role player registration agreement which outlined the terms and conditions of his employment. On page three of this agreement, grounds for termination during the training in the middle of an exercise included "If you leave the training area without permission from your supervisor."<sup>8</sup>

Applicant began his employment In May 2009. On September 27, 2009, Applicant and 11 coworkers walked off the job site. The role play director believed the employees left because they wanted more work hours. Applicant acknowledged that he left this job because he did not like the working conditions, which he described as living in a tent without light, heat, restroom facilities, or shower during the cold winter. He also believed he worked 24 hours, but was paid for 8 hours. Applicant states that he discussed the working conditions with his site manager, who then gave him permission to leave. In a September 24, 2013 letter to Department Counsel, the employer stated that their data base file on Applicant showed that he "quit mission" and that this information was entered into their data base on October 14, 2009. The company later terminated him from its employment. Applicant denies receiving a notice of termination.<sup>9</sup>

---

<sup>6</sup>In Afghanistan, land is not measured in acres, but is measured in Jeribs, used in the documents in the record, or hectares. For purposes of this decision, the Afghan land is being described in measurements used in the United States. GE 9; GE 10.

<sup>7</sup>GE 7; GE 9; GE 10; Response to SOR; Tr. 30-31, 57-59.

<sup>8</sup>GE 7.

<sup>9</sup>GE 7; GE 11; AE E; Tr. 33-35, 53-57, 66.

SOR allegations 2.a and 2.e concern Applicant's military service in Afghanistan. The SOR alleges that Applicant falsified his 2003 security application (SF-86) when he omitted his prior Afghan military service, and that he falsified his 2004 signed, sworn statement when he stated that he never served in the military. Applicant listed his Afghan military service on his March 3, 2012 SF 85P, his April 24, 2012 e-QIP, and his May 29, 2012 e-QIP. The summary of his personal subject interview on May 21, 2012 states as follows:

Between March 1976 and March 1977, subject [Applicant] served one year mandatory term in the Afghan military. Subject worked in the communication division. Subject received about 30 to 100 Afghani per month as all other necessities: food, shelter, clothing, etc, were provided by the Afghan military. Subject did not have any access to any classified, secret or sensitive information of the Afghan Army. Upon completion of his term, subject received an honorable discharge. Subject then began working as a teacher at .[a] . high school until summer of 1984. (GE 7, p.1)

A counterintelligence agent interviewed Applicant on April 2, 2012. The agent completed a formal questionnaire based on Applicant's responses and a summary of the interview. Question 13 asked if Applicant had ever served in the military. In response, Applicant advised that he served one year in the Afghan Army, and he provided the dates of service, his duties, and rank. Applicant also indicated that he had an honorable discharge and that he was conscripted into the Afghan Army. In a June 11, 2012 interview with a counterintelligence agent, Applicant again acknowledged his Afghan military service, providing the same information as he had provided earlier.<sup>10</sup>

In his response to the SOR, Applicant denied falsifying this information. He indicated that he had served in the Afghan military, but that he did not mention it in his sworn affidavit because he did not realize that his attending military school for a year constituted military service. He listed this schooling as military service on later documents after research confirmed that this schooling was considered military service. Applicant did not explain on later documents that he attended military school during this year. At his hearing, Applicant acknowledged the mandatory requirement to serve one year in the Afghan military. Applicant stated that he did his service as a teacher because teaching was part of community service. He denied any military training, although he admitted that he sometimes wore a military uniform. He never considered himself a soldier.<sup>11</sup>

SOR allegations 2.b, 2.c, and 2.f relate to land in Afghanistan owned by Applicant's father at the time of his death many years ago. The SOR alleges that Applicant falsified his e-QIP, SF 85P, and prenomination personal interview form when he answered "no" to question 20A on his April 24, 2012 e-QIP (SOR ¶ 2.b), question 12

---

<sup>10</sup>GE 1 - GE 3; GE 9; GE 10.

<sup>11</sup>Response to SOR; Tr. 32-33, 48-53.

on the 2003 SF 86 (SOR ¶ 2.f) and question 9 on his February 29, 2012 prenomination form (SOR ¶ 2.c) about his ownership of foreign land. During his April 2, 2012 interview with the counterintelligence agent, Applicant advised that he owned a house and land in Afghanistan worth about \$300,000. Applicant told the agent that he had unsuccessfully tried to sell the house and land, which belonged to his father who passed away many years ago. In his May 21, 2012 personal subject interview, Applicant advised that there was about 40 acres of land in Afghanistan under his father's name and that his name was not on the land. In a prenomination personal interview form dated May 28, 2012, the "no" answer to question 8, which asks about foreign land holdings, is crossed out and "yes" is hand written, then initialed by Applicant. In the May 29, 2012 e-QIP, the "no" answer to question 20A, which asks about ever owning foreign land, is blacked out and the "yes" block is marked. A handwritten note explains that Applicant owns 32 acres of farmland in Afghanistan valued at approximately \$65,000. Applicant initialed this change, although he denies the handwriting in the note is his. In his June 11, 2012 interview with a counterintelligence agent, Applicant stated that he and his siblings inherited approximately 32 acres of farmland in Afghanistan from their father, which Applicant valued at approximately \$65,000. Applicant advised that he was actively trying to sell the land. At the hearing, Applicant stated that he does not own land in Afghanistan. The land in Afghanistan belonged to his father, and the land is still in his father's name as title to the land has not been transferred to him.<sup>12</sup>

The SOR alleges (¶ 2.d) that Applicant falsified his answer to question 7 on his SF 85P. Question 7 concerns Applicant's employment record and asks the following:

Has any of the following happened to you in the past 7 years?

- Fired from job
- Quit a job after being told you'd be fired
- Left a job by mutual agreement following allegations of misconduct
- Left a job by mutual agreement following allegations of unsatisfactory performance
- Left a job for other reasons under unfavorable circumstances

Applicant answered "no" to this question. Applicant and 11 other employees left their place of employment on September 27, 2009. Applicant explained that he left the job because of working conditions and pay. He testified that he told his site manager about his concerns with the working conditions and that the site manager told him he could leave. Applicant acknowledged that he left the work location and that he never received a formal notice of termination.<sup>13</sup>

The record does not contain a copy of any security clearance applications handwritten by Applicant, nor is there an explanation as to why Applicant completed two e-QIPs in just over a month. The May 29, 2012 e-QIP contains 23 handwritten changes

---

<sup>12</sup>GE 1; GE 5 - GE 7; GE 9; GE 10; Tr. 30, 33, 39-42.

<sup>13</sup>GE 3; AE E; Tr. 33-35, 53-57.

and the May 28, 2012 prenomination personal interview form contains two handwritten changes. Applicant denies that the handwriting is his, but he acknowledges his initials at the changes. He also admitted that someone working for his employer helped him with the application. Given these changes and his admission about help from someone working with his employer, I find that someone reviewed this e-QIP and prenomination form with Applicant. Based on information given by Applicant, this individual wrote in the changes, which Applicant then initialed. Applicant also acknowledged that his daughter initially helped him with the application.<sup>14</sup>

Applicant provided three letters of reference from his military commanders at his last deployment. They describe him as an individual with outstanding interpersonal skills and work ethic. He is reliable, courteous, and professional. He showed a firm grasp of American and Afghan culture, which helped with their work. These individuals think highly of Applicant, trust him, and recommend him for a security clearance. While working in Afghanistan, he worked in dangerous places. Applicant also received a certificate of appreciation for his services.<sup>15</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 Qaeda. Security and violence remain a serious issue. 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 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 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. Sometime 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 U.S. 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>16</sup>

---

<sup>14</sup>GE 1; GE 5; Tr. 39-46.

<sup>15</sup>AE D.

<sup>16</sup>HE 2.



## 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.

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 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 conditions that could raise a security concern and may be disqualifying:

- (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;
- (e) 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.

Applicant's estranged wife, four daughters, and one brother are citizens and residents of the United States. Applicant's son recently became a United States citizen. Thus, no security concern is raised by these family members. Applicant's son-in-law is also a permanent United States resident, who lives in the United States and recently began the process to obtain his U.S. citizenship. Applicant's remaining brother is a resident and citizen of the United Kingdom. This brother has retired from his high-level position in the Afghan government. Between 2003 and 2012, this brother became a citizen of the United Kingdom. There is no record evidence that this brother continues to be a citizen of Afghanistan. Applicant talks by telephone with his brother four to six times a year. Applicant maintains a normal familial relationship with this brother and his son-in-law. Applicant does not have any immediate family members living in

Afghanistan. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contact with his family member living in the United Kingdom and his son-in-law 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 member who may be threatened by terrorists.

Applicant and his brothers, at a minimum, have a right to claim 32 acres of land belonging to their deceased father. The actual ownership of the land is unclear from this record. As with Applicant's family relationships, the Government must establish that his right to claim this land creates 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 interest in his father's land which terrorists may attempt to claim.

In determining if such a heightened risk exists, I must look at Applicant's relationship and contact with his brother, as well as the activities of the government of Afghanistan and terrorist organizations within Afghanistan since his brother held a high-level position with the Afghan government. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's right to claim his father's land, and his relationships and contacts with his son-in-law and his brother living in the United Kingdom raise a heightened risk and a security concern because of the activities of terrorists organizations, particularly the Taliban. His brother's past high-level governmental position and his father's land place him in a position to be exploited, coerced, pressured, or manipulated. 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 connection to Afghanistan causes 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 land in Afghanistan and Applicant's contacts with his brother and son-in-law. Applicant's contacts raise a heightened risk under AG ¶¶ 7(a),

7(b), and 7(e). A security concern is not raised by Applicant's son as he became a United States citizen in August 2013.<sup>17</sup>

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 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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant's son-in-law lives in the United States and has begun the process to obtain his United States citizenship. Applicant's only nonresident family member, now resides in the United Kingdom and is a citizen of the United Kingdom. His brother no longer serves in a high-level position for the Afghan government, as he is now retired. Applicant has mitigated the security concerns about these family members under AG ¶¶ 8(a), 8(b), and 8(c).

Applicant and his brothers have decided not to proceed with the steps necessary to sell their father's land in Afghanistan because the land is located in a dangerous area. With the value of the land estimated at approximately \$65,000 to be divided three ways, Applicant's interest in this land is not significant. He and his brothers have not demonstrated a strong desire to seek title or retain title to this land. They prefer to sell it, but cannot at this time and may never do so. Their potential ownership of this land is tenuous at this time. Thus, this land is unlikely to result in a conflict of loyalties for Applicant and could not be used to effectively influence, coerce, exploit, manipulate, or

---

<sup>17</sup>The Afghan citizenship of Applicant's son was not an issue in the previous case. GE 12.

pressure him for classified information. Applicant has mitigated the security concerns about his father's land under AG ¶ 8(f).

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The Government alleges six incidents of falsification by Applicant between 2003 and 2012 when he applied for a security clearance in 2003 and 2012. For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from his 2003 security clearance application, his 2004 sworn statement, his April 2012 security clearance application, his 2012 application for a public trust position, and his 2012 prenomination form when he did not list his previous military experience, identify the circumstances surrounding his departure from his job in 2009, and reveal his entitlement to or ownership of land in Afghanistan. This negative information is material to the evaluation of Applicant's trustworthiness and honesty. In his response and at the hearing, he denied that he intentionally falsified his answers on these documents or had an intent to hide negative information from the Government. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>18</sup>

When he completed his 2012 SF-85P, Applicant did not mention the circumstances surrounding his departure from his employment in 2009. The

---

<sup>18</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

employment application signed by Applicant on May 15, 2009 clearly states that any employment with this employer would be considered “at will employment”, meaning that either Applicant or his employer could terminate or end the employment relationship at any time for any reason that did not violate the law. Applicant walked off his work site with 11 other employees because of working conditions, a right permitted in an “at will employment” relationship. Following this action, his employer noted that he “quit the mission.” Applicant’s actions, whether Applicant intended to terminate his employment or not, immediately ended the employment relationship between him and his employer under the “at will” provisions of his employment agreement. Applicant was on notice that such an action would terminate or end the employment relationship when he applied for the job. Question 7 seeks information from an applicant specifically directed at an employer’s decision to sever an employment relationship because of misconduct or poor performance by the applicant. There is nothing in this record to reflect that Applicant’s employer had misconduct or performance issues with Applicant. Rather, it is Applicant who had issues with the working conditions at this job site, a factor not addressed in this question.<sup>19</sup> Applicant’s “no” answer is not an intentional falsification under the facts of this case. SOR allegation 2.d is found in favor of Applicant.

Applicant omitted his previous Afghan military service from his 2003 SF-86 and denied any previous military service in his 2004 sworn, signed affidavit. Eight years later, in three different documents and during three interviews, he acknowledged he served in the Afghan military for one year between 1976 and 1977. With this acknowledgment, I find that Applicant intentionally falsified his 2003 SF-86 and his 2004 sworn, signed affidavit. The Government established a security concern under AG ¶ 16(a) by SOR allegations 2.a and 2.e.

In three documents (SOR allegations 2.b, 2.c, and 2.e), Applicant denied holding any land in a foreign country. Because he acknowledged that he may own or be entitled to his father’s land in Afghanistan, he intentionally falsified his answers as alleged in the above allegations. The Government has established a security concern under AG ¶ 16(a).

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

---

<sup>19</sup>An argument can be made that Applicant’s walking off the job is misconduct which ended the employment relationship. However, given the employer’s note the Applicant “quit the mission”, it is clear employer did not treat the action as misconduct, but considered it a termination of their employment agreement by Applicant. Thus, from the employer’s perspective, Applicant did not leave the job under unfavorable circumstances.

stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

Applicant's six different admissions in 2012 that he served in the Afghan military would mitigate any security concerns raised by his 2003 and 2004 falsifications because he provided this information without being confronted with it and because, without his admissions, the Government would not have known about his Afghan military service. However, at the hearing and in his response to the SOR, Applicant again denied any military service for Afghanistan. He provided varying explanations for what he called his military service. I find his explanations not credible because the detailed information provided in his three interviews could have only been given by him. There is no way the three interviewers would have been able to obtain this information, except through Applicant. Since I do not find his SOR response and hearing testimony credible, he has not mitigated the security concerns raised in SOR allegations 2.a and 2.e.

In 2003, Applicant did not mention the land in Afghanistan belonging to his father. He twice did not acknowledge the existence of this land in 2012, before he admitted to the existence of the land on four other occasions in 2012. The actual status of the land ownership is unclear because Applicant has said he owned the land, he inherited the land, he and his brothers are potential owners of the land, his father's name is on the land, or his name is not on the land. What is clear from the record evidence is that his father owned land in Afghanistan, which he and his brothers can inherit or now own, and that the land has not been sold and is not for sale. Applicant's differing explanations about the ownership of this land do not support mitigation of the security concerns of the Government. His various explanations about the ownership of the land in Afghanistan continue to raise a concern as to his honesty and truthfulness.

### **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.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant immigrated to the United States as a refugee in 1988 with his family. Except for one brother, all his immediate family members reside in the United States and are citizens. Applicant has built a new life in the United States. His only family member not living in the United States now lives in the United Kingdom and is a citizen of the United Kingdom. The land owned by his father can become his and his brothers if they file the necessary papers to establish ownership. Because this land is located in a dangerous area, he and his brothers have decided not to take the necessary steps to establish their inheritance.

English is Applicant's second language, making his ability to understand some of the nuances of the English language problematic. Applicant applied for a security clearance in 2003. His clearance request was denied because the administrative judge concluded that he intentionally falsified his security clearance application by not providing information about his work and investment relationship with a film company and about his 1998 bankruptcy case. This decision placed Applicant on clear notice that he needed to be truthful with the Government in all future security clearance applications. Instead of providing clear and correct information as requested in each question, Applicant has given conflicting information about the land in Afghanistan and made incorrect and false statements about his past military service. While his command has praised his work skills and work ethic, the command's recommendation to grant him a security clearance is insufficient to overcome his conflicting hearing testimony, prior responses to investigators, and his responses to questions on his security clearance documentation.

Overall, the record evidence leaves me with 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, but he has not mitigated the security concerns arising from his personal conduct.

### **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

Paragraph 2, Guideline E:	AGAINST APPLICANT
---------------------------	-------------------

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	Stricken
Subparagraph 2.h:	Stricken

### **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.

---

MARY E. HENRY  
Administrative Judge