



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



In the matter of: )  
)  
) ISCR Case No. 13-00559  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Department Counsel  
For Applicant: *Pro se*

11/06/2013

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

On March 21, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Item 4). On July 12, 2013, the Department of Defense (DoD) issued a statement of reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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) promulgated by the President on December 29, 2005. The SOR detailed reasons why DoD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him.

Applicant answered the SOR on August 10, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing. Department Counsel submitted the Government's written case on August 22, 2013. A complete copy of the File of Relevant Material (FORM), containing six Government

Items (Item 1-6), was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on October 5, 2013, and returned it to the Defense Office of Hearings and Appeals (DOHA). He timely submitted a document that I marked as Applicant Exhibit (AE) A and admitted into the record without objection from Department Counsel. I received the case assignment on October 21, 2013.

### **Procedural Rulings**

Department Counsel requested administrative notice (AN) of facts concerning Afghanistan. (FORM; Item 6 (1-9).) Counsel provided nine supporting documents to show detail and context for those facts. Applicant did not object to the documents, and I grant Department Counsel's request.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

### **Findings of Fact**

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a and 1.d. He denied the allegations in SOR ¶¶ 1.b, 1.c and 1.e and offered explanations. His admissions, including those made in a September 2008 Counterintelligence Focused Security Screening Questionnaire and Interview, are incorporated herein as findings of fact. (Items 3, 5; AE A.)

Applicant was born in Afghanistan in 1960, and is 53 years old. He attended high school and graduated from a teacher's college there in 1978. He served as a Colonel in the Afghan Army from 1980 to 1992, and subsequently served in its Inactive Reserves. He received an honorable discharge. He resided in Afghanistan until October 1994, at which time he left the country and went to another Middle Eastern country where he received refugee status. In March 2001 he entered the United States as a refugee. In May 2007 he became a naturalized U. S. citizen. He has a current U.S. passport that expires in 2017. (Items 4, 5.)

After arriving in the United States in March 2001, Applicant was unemployed until November 2002 when he obtained a position as a security guard for a private company. He worked for that company until March 2011, at which time he accepted a linguist position with a defense contractor and deployed to the Middle East. (Item 4.)

Applicant's spouse was born and raised in Afghanistan. They married in 1982, while living in Afghanistan. She is a naturalized U.S. citizen and works as a cashier. Applicant's four children were born in Afghanistan. All four are naturalized U.S. citizens and residents. Applicant's parents were citizens and residents of Afghanistan. Both are deceased. (Item 5; AE A.) He maintained monthly contact with his mother until her death about two months ago. Applicant has two brothers, both were born in Afghanistan. One brother is deceased. He was a citizen and resident of Afghanistan. Applicant maintained contact with that brother until his recent death. His other brother is a citizen and resident of France. He does not have contact with this brother. (Items 3, 4.) Applicant's mother-in-law and father-in-law are citizens and residents of Afghanistan. They are unaware of his work as a linguist. He stated in his response to the FORM that he has not had contact with them for more than a year, although he stated previously to a security specialist that he spoke to them once a month. He also noted in that response that his wife does not have "much" contact with them because she works. (Items 3, 5; AE A.) It is unclear how often he and his wife are in communication with his in-laws.

Applicant wrote in his response to FORM that "for the last three years [he has] been working with the US military and [does not] have any contact with any foreigners outside of [his] duties as a linguist." (AE A.) He and his family are happy living in the United States. He feels "responsible to do [his] best to support and serve the US Army in [the Middle East] by all means." (*Id.*) He left Afghanistan because of the extremists in power. (*Id.*)

Applicant submitted a Letter of Appreciation from a First Lieutenant in the Marine Corps with whom he worked for six months. The First Lieutenant wrote in May 2012 that Applicant was one of the top five linguists he supervised during deployments to the Middle East. He said that Applicant's "efforts were critical to the success of our operations." (AE A.) Applicant also submitted two Certificates of Appreciation for his work with the U.S. Marines from 2011 to 2012. (AE A.)

## **Afghanistan**

I take administrative notice of the facts set forth in the Administrative Notice documents (FORM) concerning Afghanistan, which are incorporated herein by reference. Of particular significance are Afghanistan's history of political unrest, and the presence of the Taliban and al-Qaeda, terrorist organizations, which continue to assert power and intimidation within the country. Safety and security are key issues because these terrorist organizations target United States and Afghan interests by suicide operations, bombings, assassinations, car-jacking, assaults, and hostage taking. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence, and the government has difficulty enforcing the rule of law.

## Policies

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Executive Order 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Department of the Navy v. Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Foreign Influence

AG ¶ 6 explains the security concern pertaining to foreign influence as follows:

Foreign contacts and interest 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 sets out 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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The mere circumstance of close family ties with a family member living in Afghanistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States places a significant but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Afghanistan do not pose a security risk. Applicant

should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in Afghanistan.

While there is no evidence that intelligence operatives or terrorists from Afghanistan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Afghanistan has an enormous problem with terrorism. Applicant's relationship with his mother-in-law and father-in-law living in Afghanistan creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist family members in Afghanistan by providing sensitive or classified information. That relationship and his 12-year military background with the Afghan army, raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the above security concerns in this case are:

(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.

AG ¶¶ 8(a) and 8(c) have limited applicability. After leaving Afghanistan Applicant maintained contact with his mother and brother, who were citizens and residents of Afghanistan until their recent deaths. Although he stated that he has not had communication with his Afghan in-laws for a year, he previously contacted them monthly. While his loyalty and connections to his in-laws in Afghanistan are positive character traits, for security clearance purposes, those connections negate the possibility of mitigation under AG ¶ 8(a). Applicant failed to provide sufficient evidence to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Afghanistan citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) has some application. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has some connections to the United States. In 2001 Applicant and his family moved to the United States as refugees. In 2007 he became a U.S. citizen. His wife and four adult children are naturalized U.S. citizens, residing in the United States. He worked in the United States since 2002. Since March 2011 he honorably served as a linguist for the U.S. Marine Corps in a Middle Eastern country. There is no evidence that he owns real estate or personal property in the United States, or has established other longstanding connections here.

### **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 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are foreign influence security concerns arising from Applicant's history of connections to Afghanistan. Applicant, his parents, and siblings were born and resided there. He was educated at an Afghan college. He served as a colonel in the Afghan army for 12 years. There is no information as to the scope of his duties or the length of time he was in the army's inactive reserves. His wife and children were citizens and residents of Afghanistan until they arrived in the United States in 2001. Details about their connections or communications with family members in Afghanistan are absent. Applicant and his communicate with his in-laws in Afghanistan, but the extent of said communication is unclear. His role as a linguist for the U.S. Army creates a greater risk of potential coercion, should terrorists learn of his military background.

Applicant established some connections to the United States, including his U.S. citizenship for the last six years, as well as his wife and children's U.S. citizenship and residency. He and his wife have worked in the United States. He expressed loyalty to the United States, and has served the U.S. Marine Corps for over two years. Although

these factors weigh in favor of approval of Applicant's security clearance, they are not sufficiently persuasive to outweigh the factors against its approval, including a significant history of personal connections to Afghanistan, including 12 years of military service.

Overall, the record evidence leaves me with sufficient doubt and questions as to Applicant's present eligibility and suitability for a security clearance. He has not carried his burden to mitigate the foreign influence security concerns.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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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Shari Dam  
Administrative Judge