



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 13-00630

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

03/24/2014

**Decision**

HOWE, Philip S., Administrative Judge:

On July 24, 2009, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). He tendered a second e-QIP on February 4, 2013. On August 30, 2013, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on October 8, 2013. Applicant admitted all but one of the six allegations. Applicant requested his case be decided on the written record in lieu of a hearing.

On November 21, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on December 6, 2013. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on December 28, 2013. Applicant filed a Response to the FORM on January 13, 2014, within the 30 day time allowed that would have expired on January 27, 2014. Department Counsel had no objection to the inclusion of the Response in the case file.

I received the case assignment on February 24, 2014. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

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

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Islamic Republic of Afghanistan (Afghanistan). (FORM) The facts administratively noticed are set out in the Findings of Fact, below.

#### **Findings of Fact**

Applicant denied the allegations in Subparagraph 1.d and admitted all other allegations contained in Subparagraphs 1.a to 1.c, 1.e, and 1.f. He submitted documents to be considered in his request for a security clearance. (Items 1-13)

Applicant is 25 years old. He works for a defense contractor. He is not married. Applicant was born in Afghanistan. He has lived in the United States since December 2008. He became a U.S. citizen in March 2010. Applicant worked for the Army from 2006 to 2008 in Afghanistan. He immigrated to the U.S. in December 2008 on a special visa. He served as member of the U.S. Army from September 2009 to January 2013, being discharged with an honorable discharge in the rank of Sergeant. His primary duty was as a translator aide. Applicant received the Army Commendation Medal and two Army Achievement Medals, among other unit and service awards shown on his record. He is trying to bring his family to the United States. (Items 2-13, Response including DD Form 214 as Item 6)

Applicant's mother and father are citizens of and residents in Afghanistan. His three brothers and one sister are residents in and are citizens of Afghanistan. His brother-in-law is resident in and a citizen of Afghanistan. Applicant's Answer states his brothers are young, being 19, 13, and 12 years old. He claims the two youngest brothers are students. His oldest brother was listed on a "relatives and associates" form in 2013 as the finance officer of the "State Corporation Construction." He speaks to his brothers once a month as disclosed on the relatives and associates form. Applicant asserts his sister is a housewife who rarely leaves her home. He also contends he rarely speaks to his brother-in-law and they know nothing about his duties. His brother-in-law is listed on a 2013 "relatives and associates" form as an engineer in the "State Corporation Construction" company in Afghanistan. He speaks to his sister and brother-in-law once a month. (Items 3, 4, 7, 10-13)

Applicant's father is a police officer. . Applicant claims he does not speak to his father because of family problems except on a quarterly basis. Applicant's mother is a school teacher. He speaks to her twice a month according to the 2013 relatives and associates form. (Items 3, 4, 7, 8, 10-13)

Applicant has two cousins listed in his "relatives and associates" forms in the file. They reside in and are citizens of Afghanistan. The allegation in the SOR that he has three cousins Applicant denied claiming he only had two cousins and one friend. The "relatives and associates" forms list 14 friends. Applicant admitted on his e-QIP he spoke to his cousins weekly but now claims he does so infrequently because they have "fallen out of touch." The "friends and associates" form lists their contact as once every four months. (Items 3, 7, 9, 11-13)

Applicant submitted four letters of recommendation from persons who served with him in the U.S. Army. He also attached the Army Commendation Medal recommendation document to his Response. The character letters all state Applicant served above the standard of duty. (Response)

## **Afghanistan**

I take administrative notice of the facts set forth in the Afghanistan FORM Exhibits. Afghanistan is a country in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia in the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. It has about 18 million people. Afghanistan is presently an Islamic Republic that has had a turbulent political history, including an invasion by the Russians in 1979. After an Accord was reached in 1989 and Russia withdrew from the country, fighting continued among the various ethnic, clan and religious militias. By the end of 1998, the Taliban

rose to power and controlled 90% of the country, imposing aggressive and repressive policies. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic Government took power in 2004 after a popular election. Despite that election, terrorists and the Taliban continue to assert power and intimidation within the country. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence. (FORM)

### **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concerns relating to the guideline for foreign influence are set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

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

(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;<sup>1</sup> and

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<sup>1</sup> The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign

(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.

Since leaving Afghanistan, Applicant has maintained telephone contact with his mother, three brothers, and one sister, who are residents and citizens there. He continues to speak to them every month or less. Applicant's father has a position in which he could benefit from his access to sensitive information or technology. His brother and brother-in-law work for the "State Corporation Construction" company, which is not described in Applicant's documents, might also benefit from any information Applicant might obtain with a security clearance. However, under either disqualifying condition, Applicant's connections to his family residing there could create a potential conflict of interest between his security obligations and desire to help them, in a situation wherein they were taken hostage or otherwise threatened with harm if he did not cooperate with terrorists' demands. Because of the turbulent environment in Afghanistan there is a heightened risk of pressure and coercion to be brought on Applicant's family members living there.

The Government produced substantial evidence of these disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 8 provides three of the six potential conditions that could mitigate security concerns:

(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;

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influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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.

The current positions and activities of Applicant's three family members in Afghanistan do involve the government or military and they would have an interest in acquiring protected information. Also, their physical presence in Afghanistan creates the potential that their safety could be threatened to the point that Applicant would confront a choice between their interest and those of the United States. The same standard applies for Applicant's three cousins in Afghanistan. Hence, AG ¶ 8(a) has no application.

Applicant produced little evidence establishing AG ¶ 8(b). Based on his arrival in the U.S. in 2008 and his citizenship in 2010, he cannot be expected to resolve any conflict of interest in favor of the United States. His three years of Army service and honorable discharge does show more commitment, but it is not of a sufficient countervailing significance. He did not demonstrate he owned property and holds bank accounts in the United States. He expressed loyalty to the United States but does not have a proven record of longevity in that attitude.

Applicant maintains ongoing communication with his sister, mother, and three brothers living in Afghanistan, and periodically speaks to them. He either has quarterly contact or intermittent contact with his policeman father. His contacts with his cousins vary from every few months to non-existent since 2007. Hence, AG ¶ 8(c) cannot apply, as those contacts are sufficiently frequent and not casual.

### **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 all facts and circumstances surrounding this case. Applicant has six immediate family members in Afghanistan plus his brother-in-law and three cousins. Two of them, his father and mother, and possibly two more, one brother and his brother-in-law, have government or government-connected jobs. Applicant did not explain with sufficient clarity the nature of their government positions. He also has not spent sufficient time in the United States to establish a close and dedicated relationship with it to overcome his familial history with Afghanistan. He does not own property or have significant economic connections to the United States that would overcome his loyalty to his family working in Afghanistan, particularly to his parents who are employed by the Afghan government.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Foreign Influence. I conclude the whole-person concept against Applicant.

### **Formal Findings**

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a to 1.g:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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PHILIP S. HOWE  
Administrative Judge



