



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00644
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

04/11/2014

**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 granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 7, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on October 24, 2013, 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; 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 November 15, 2013, and he answered it on November 16, 2013. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 24, 2014, and I received the case assignment on February 10, 2014. DOHA issued a Notice of Hearing on February 26, 2014, and I convened the hearing as scheduled on March 26, 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 5, which were received and admitted into evidence without objection. Applicant and his daughter testified. He submitted exhibits (AE) marked as AE A<sup>1</sup> through AE B, which were received and admitted into evidence without objection. I held the record open until April 2, 2014, for Applicant to submit additional matters. Applicant timely submitted AE C, which was received and admitted without objection. The record closed on April 2, 2014. DOHA received the hearing transcript (Tr.) on April 3, 2014.

### **Procedural and Evidentiary Rulings**

#### **Notice**

Applicant received the notice of the date, time and place of the hearing at his place of work on an unknown date. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 11.)

#### **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 HE 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.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with explanation, all the factual allegations of the SOR. His admissions are incorporated herein as findings of fact. 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.

Applicant, who is 64 years old, works as a linguist for a Department of Defense contractor in Afghanistan. He began his current employment in February 2011 and has

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<sup>1</sup>Prior to the hearing, Applicant marked all his intended exhibits as 1 through 17. For consistency purposes, these exhibits were marked as AE A-1 through AE A-17. The summary sheet was marked as AE A. Tr. 21-32.

worked as a linguist in Afghanistan from at least January 2012 until March 2014.<sup>2</sup> His employer praises his linguistic skills, his work ethic, and his attitude. His performance ratings are meets expectations or outstanding. Prior to his employment, Applicant worked in the telecommunications industry from 1999 until 2009, when his employer outsourced the work at Applicant's office and closed the work site. Applicant was unemployed for more than a year.<sup>3</sup>

Applicant was born and raised in Afghanistan. He studied economics at an Afghan university and later in London. He has a bachelor's degree. He obtained a master's degree at a United States university in 1996. Applicant and his wife, who was born in Afghanistan, married in 1975 in Afghanistan. They have one daughter, who is 38 years old and was born in Afghanistan. Applicant has two grandchildren, who were born in the United States.<sup>4</sup>

Applicant, his wife, his daughter, two of his three brothers, and five sisters immigrated to the United States around February 1980. Applicant's third brother immigrated to Canada about the same time. This brother is a Canadian citizen residing in Canada. Applicant, his wife, his daughter, his son-in-law, his two brothers, four of his sisters, and his wife's family are citizens and residents of the United States. Applicant's remaining sister holds a permanent resident card and lives in the United States. One brother and one sister are deceased. Applicant's parents never immigrated to the United States and are deceased.<sup>5</sup>

At the time of their death, Applicant's parents owned three parcels of land in Afghanistan. The largest parcel is about two acres, which Applicant estimates is valued at between \$3,000,000 and \$4,000,000. The second parcel is much smaller, attached to the larger parcel of land, and currently occupied by an unauthorized tenant. Applicant describes the third parcel of land as a pile of dirt in a historical conservation area. He values the two smaller parcels of land collectively at between \$300,000 and \$400,000. For many years, this land was not used by Applicant or his family because they did not believe it was safe for them to return to Afghanistan.<sup>6</sup>

Under the inheritance laws of Afghanistan, heirs are required to prove their entitlement to land belonging to their parents. In 2005, Applicant returned to Afghanistan as he believed it was safe. Applicant and his siblings started the long process to establish their inheritance. Afghan law required them to file a claim in court to establish

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<sup>2</sup>Applicant's current employer may have hired him sometime in 2010, but this information is not clear in the record.

<sup>3</sup>GE 1; AE A-7; AE A-8; AE A-10; AE A-15.

<sup>4</sup>GE 1; Tr. 33.

<sup>5</sup>GE 1 - GE 4; Tr. 33, 47.

<sup>6</sup>GE 4; GE 5; Tr. 34, 37-38, 48.

their right to property. The family filed such a claim and established their right to the large parcel of land, but they have not established their right to the two smaller parcels. The Afghan court determined that Applicant and his siblings are the proper heirs. At this point, the family had two choices: 1) divide the land into nine pieces and title each piece in each individual's name, or 2) sell the property and divide the proceeds. The family decided to sell the property and gave Applicant a power of attorney to do so.<sup>7</sup>

Applicant returned to Afghan to sell the property.<sup>8</sup> A local bank expressed interest in the large parcel of land and gave Applicant a \$200,000 deposit towards the purchase. Applicant opened a bank account in Afghanistan where he deposited this money. This bank account is now closed. Applicant used about one-half of this money for payments needed to process the sale of the property. He also used \$35,000 to invest in a technology business in Afghanistan. The sale of the property failed. The property is listed for sale with an agent, but has not sold because the real estate market in Afghanistan is slow. He and his siblings intend to sell the property.<sup>9</sup>

Applicant and his siblings do not have any legal rights to the two smaller properties because the family has not gone through the process to obtain legal title. At this time, the family does not have legal title to the land and cannot sell these two properties. The family will decide what to do with this property after they sell the larger property. Applicant is willing to relinquish his interest in the smaller properties, but not the larger property. Applicant transferred his power of attorney to manage the family property in Afghanistan to a nephew, who is now managing the sale of the large parcel.<sup>10</sup>

In 2010, an Afghan local discussed starting a technology business. Applicant invested \$35,000 in the business. Applicant was a silent partner and did not actively participate in the business. In November 2011, Applicant withdrew from the business. His partner returned \$14,000 of Applicant's initial investment. To Applicant's knowledge, the business operating license expired in 2011 and has not been reactivated. He and his business partner opened a bank account for the business. This account remains open and has a current balance of \$41.51. Applicant repeatedly asked the bank to close the account. The bank verified his request and states that under its policy, Applicant must close the account in person.<sup>11</sup>

When he was in Afghanistan to sell his parents' property, Applicant joined a neighborhood club near where the property is located. He did this solely for purposes of

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<sup>7</sup>GE 5; Tr. 36-37.

<sup>8</sup>Applicant notified his DOD contractor about this trip and kept his employer advised of his activities while in Afghanistan. AE A-4 through AE A-6.

<sup>9</sup>GE 5; Tr. 37-38.

<sup>10</sup>AE A-17; Tr. 37-41.

<sup>11</sup>GE 5; AE A-1; AE A-2; AE A-3; AE C; Tr. 41-42, 44-45, 57-62.

selling his property. He wanted contacts in the community should a potential buyer make inquiries about him. His name would be verified. His membership lasted one year. He knows little about this club; he is no longer a member; he has no contact with the club; and the club has no contact information for him.<sup>12</sup>

Applicant owns three pieces of property in the United States, with a current total market value of approximately \$1,905,000. His bank accounts are in the United States. Except for the property in Afghanistan, all his assets are in the United States. He estimates his gross assets in the United States at over \$2,000,000.<sup>13</sup>

The SOR raises a security concern about a cousin of Applicant's wife and two friends. The cousin of Applicant's wife grew up in the United States and later served as an ambassador on behalf of Afghanistan for many years. This cousin is no longer working as an ambassador, and to Applicant's knowledge, the cousin is currently unemployed, living in the United States. Applicant has not and does not have contact with his wife's cousin. His wife learns about her cousin from the cousin's father, her uncle. A casual friend has and may still be serving as an ambassador for Afghanistan in the west. Applicant has not spoken with this friend in over three years and is not sure if he is still an ambassador, but believes he is. When he returned to Afghanistan in 2005, Applicant met a childhood friend. Upon Applicant's return to the United States, Applicant began sending his friend \$100 a month because his friend had six children and worked in a low-level clerical position. Applicant considered this money charity. Applicant stopped sending the money in 2010 after he was laid off from his job. He thinks this friend is now retired.<sup>14</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 Qa'ida. 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

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<sup>12</sup>AE B; Tr. 45, 69-70.

<sup>13</sup>AE A- 11; AE A-12; Tr. 46, 50-52.

<sup>14</sup>GE 3 - GE 5; Tr. 42-44, 63-68.

commitment to help Afghanistan rebuild itself. 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>15</sup>

## **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

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<sup>15</sup>HE 2.

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; and

(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 spouse, daughter, son-in-law, grandchildren, two brothers, and four sisters, as well as his wife's family are citizens and residents of the United States. His family members do not raise a security concern. His wife's cousin served as an ambassador for Afghanistan, but is no longer in this position. The cousin returned to the

United States, where he lives. Applicant does not have any contact with his wife's cousin. This distant relative does not raise a security concern. Applicant has a casual friend whom he believes serves as an ambassador for Afghanistan and a childhood friend who is a citizen and resident of Afghanistan. Applicant last spoke with either of these individuals about three years ago. When his job ended in late 2009, Applicant stopped sending his friend \$100 a month in support. Applicant's connection to these two individuals is too tenuous to raise a security concern under AG ¶¶ 7(a) and 7(b). SOR allegations 1.d, 1.e, 1.f, and 1.g are found in favor of Applicant.

When Applicant traveled to Afghanistan in 2010 to claim his parents land, he joined a neighborhood club and formed a business partnership with a resident and citizen of Afghanistan. Applicant's sole purpose in joining the club was to make his name known in the community to help sell his parents' property. His membership lasted one year. He has no contact with the members of this club members, and the club members have no information on how to contact him. As for the technology business, Applicant did not actively participate in the business. He was simply a silent partner, and he divested his interest in this business more than two years ago. SOR allegations 1.c and 1.i are found in favor of Applicant as these actions do not raise a security concern under AG ¶¶ 7(a) and 7(b).

Applicant and his siblings hold legal ownership of a valuable parcel of land in Afghanistan. They also have a right to establish legal title to two small parcels of land in Afghanistan. In addition, Applicant's name is associated with a bank account in Afghanistan. These property interests are not *per se* a reason to deny Applicant a security clearance, but his ownership or title to this property must be considered in deciding whether to grant Applicant a clearance.<sup>16</sup> The Government must establish that these business relationships create a 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 to protect his property interests if Applicant may be threatened by terrorists.

In determining if such a risk exists, I must look at the activities of the Government of Afghanistan and terrorist organizations within Afghanistan and the risk that Applicant could be targeted because of his property interests. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's property interests in Afghanistan raise a heightened risk and a security concern because of terrorist activities in Afghanistan. The evidence of record fails to show that the Afghan Government targets U.S. 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 moderate. The same cannot be said of terrorist organizations operating in

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<sup>16</sup>ISCR Case No. 09-06457 (App. Bd. May 16, 2011).



Afghanistan, whose goals are to destroy or prevent the growth of a stable, central government.<sup>17</sup>

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 U.S. interests. In determining if Applicant's property interests in Afghanistan cause 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 U.S. citizens for protected information. The human rights issues in Afghanistan continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his property interests in Afghanistan. In weighing all the factors, I conclude that Applicant's property interests raise a heightened risk under AG ¶¶ 7(a), 7(b) and 7(e).

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:

(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 moved to the United States 34 years ago. All his family resides in the United States, except one brother who lives in Canada. He and his immediate family members became U.S. citizens. They have worked in the United States and developed long-standing ties to the United States. Applicant and his family have not expressed any desire to return to Afghanistan. Rather, the family made a decision to sell their inherited property. After a lengthy process, the family established their right to inherit the large parcel of land and are now trying to sell the property. Initially, Applicant acted on behalf of his siblings, but he transferred his power of attorney authority to act on his siblings behalf to a nephew. Applicant stands to inherit between \$330,000 and \$445,000 from the sale of this property before taxes. He is willing to divest himself of his interest in the two smaller properties because the process to establish entitlement to the property is

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<sup>17</sup>*Id.*

complicated and his financial gain too small. His more than \$2,000,000 of assets in the United States are far greater, making it unlikely that he can be pressured, influenced, or manipulated because of this property. While one bank account is still open, Applicant has no intent to return to Afghanistan to close the account with \$41.51. The money in this account is de minimus and cannot be a source of pressure, exploitation, or manipulation. Applicant's first loyalty is to the United States, his homeland for more than one-half of his life. Applicant has mitigated the security concerns raised in the SOR under AG ¶¶ 8(b), 8(c), and 8(f).

### **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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant and his siblings inherited property in Afghanistan from their parents. But for this property, Applicant does not have any continuing ties to Afghanistan. Because of the political situation in Afghanistan for many years, Applicant and his family members feared harm if they returned to Afghanistan. Instead, they built a new life in the United States. They worked, purchased property, raised their families, and became citizens. Now that the government and political environment in Afghanistan have changed, Applicant and his

siblings began the process to divest themselves of their inherited property. Applicant has no interest in returning to Afghanistan to live. His life is in the United States and his first loyalty belongs to the United States. Applicant would clearly choose the interests of the United States over the interests of Afghanistan. He has mitigated any security concerns about his foreign influence.

Overall, the record evidence leaves me without 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.

### **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
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge