



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



In the matter of: )

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Applicant for Security Clearance )

) ISCR Case No. 14-01378  
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**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

11/21/2014

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant has significant connections to family members, who are citizens and residents of Afghanistan. He served honorably as a linguist in a dangerous environment, and he has substantial connections to the United States. Foreign influence security concerns are mitigated; however, Applicant has not made any progress resolving 15 delinquent debts listed in his statement of reasons (SOR), totaling \$37,176. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 2, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (GE 1) On June 23, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) as revised by the Under Secretary of Defense for Intelligence on August 30, 2006, which became effective on September 1, 2006. The SOR alleged security concerns under Guidelines B (foreign influence) and F (financial considerations). The

SOR recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On July 17, 2014, Applicant responded to the SOR and said he was "willing to cooperate if the government decides to give [him] a hearing." (HE 3) Department Counsel was ready to proceed on October 23, 2014. On October 27, 2014, the case was assigned to me to conduct a hearing and determine whether or not it is clearly consistent with the national interest to grant or reinstate a security clearance to Applicant. On November 5, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, scheduling Applicant's hearing for November 10, 2014. Applicant's hearing was held as scheduled using video teleconference. Department Counsel offered six exhibits into evidence, which were admitted without objection. (Tr. 26-27; GE 1-6) Applicant did not offer any exhibits into evidence. (Tr. 15) Applicant and two witnesses made statements on Applicant's behalf. On November 12, 2014, Applicant provided eight exhibits, which were admitted without objection. (AE A-H) The transcript was received on November 18, 2014.

### **Procedural Rulings**

Department Counsel moved to withdraw the allegations in SOR ¶¶ 2.f, 2.g, 2.h, and 2.j. (Tr. 17-20) There was no objection, and I granted the motion. (Tr. 17-21) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 21-23)

Department Counsel offered six exhibits for administrative notice concerning foreign influence security concerns raised by his connections to Afghanistan. (Tr. 26-27; Ex. I-VI) Applicant did not object to me taking administrative notice of the proffered documents, and Department Counsel's request is granted. (Tr. 27) I have also taken administrative notice of the U.S. Department of State, *Background Note: Afghanistan*, Nov. 28, 2011 and the Afghanistan-related comments of President Obama's May 28, 2014 speech to the U.S. Corps of Cadets at West Point, New York because they contain information about Afghanistan's relationship with the United States, and they emphasize the U.S. diplomatic and military goals in Afghanistan.<sup>1</sup>

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<sup>1</sup>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<sup>2</sup>

Applicant admitted all of the SOR allegations, and he provided explanations and mitigating information. (HE 3) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 42-year-old linguist, who was employed by a government contractor from November 2010 to November 2011 as a linguist in Afghanistan. (Tr. 9, 30, 43, 66; GE 1) The contractor also employed him as a linguist in Afghanistan from January to May 2014. (Tr. 46) He was sent back to the United States from Afghanistan in May 2014, because his security clearance was not approved. (Tr. 46, 66) He was employed at a restaurant from October 2012 to January 2014 as a waiter or bartender. (Tr. 46-47)

Applicant was born in Afghanistan. (Tr. 9, 43) In 1982, he came to the United States, when he was nine years old. (Tr. 43) In 1991, he graduated from high school in the United States. (Tr. 9) He was married from 1996 to 1999. (Tr. 44) He does not have any children. (Tr. 45) In 1999, he was naturalized as a U.S. citizen. (Tr. 44) He has not attended college. (Tr. 9) He has never served in the U.S. military. (Tr. 9) He served as a linguist for a total of 16 months in Afghanistan with the U.S. Army. (Tr. 9-10, 66) Applicant does not have any property in the United States. (Tr. 63)

### Applicant's Connections to Afghanistan

Applicant's mother, two brothers, three sisters, three brothers-in-law, and two sisters-in-law are citizens and residents of Afghanistan. (Tr. 56-62; SOR response to SOR ¶¶ 2.a to 2.e) He communicates with his mother and one of his siblings in Afghanistan about once a month and with his other relatives living in Afghanistan less frequently. (GE 2) His father was a citizen of the United States when he passed away. (Tr. 57) None of his family living in Afghanistan has any connection to the Afghan Government or military. (Tr. 57-62) He provided about \$18,000 over the last 17 years to his family in Afghanistan. (Tr. 62-63; SOR response to SOR ¶ 2.i) He is close to his family in Afghanistan, and he provided funds for their medical needs and for travel. (Tr. 63-64) In the last three years, he provided about \$1,000 for his mother's medical treatment. (Tr. 69)

### Financial Considerations

Applicant made payments to his creditors from 2002 to 2006. (Tr. 50, 55) His annual income in 2010 to 2011, when he worked as a linguist in Afghanistan, was about \$90,000. (Tr. 48) After he returned to the United States from Afghanistan, he decided to live off of his savings and he did not look for work for about a year. (Tr. 49, 66-67) When

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<sup>2</sup>The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

he was working as a linguist, he was generous with his friends, and he spent his money somewhat frivolously or lavishly. (Tr. 51; GE 2)

Applicant contacted a debt-consolidation or debt-resolution company, and they wanted \$19,000 to resolve \$26,000 of debt. (Tr. 49-50) He offered \$15,000 to \$17,000 and negotiations started; however, he did not follow-up on resolving his debts. (Tr. 50)

Applicant admitted responsibility for, but has not made any progress resolving his 15 delinquent SOR debts totaling \$37,176. (Tr. 52; SOR response) Three delinquent SOR debts were for less than \$200 each: ¶ 1.b (\$90); ¶ 1.i (\$110); and ¶ 1.n (\$36). He said he paid one non-SOR debt, but he did not make any payments to address any of the SOR debts for at least the previous three years. (Tr. 53-54, 56) He received about \$3,800 monthly for the five months he worked as a linguist in 2014. (Tr. 69) He regretted his poor financial choices and promised to address his debts, if he receives a security clearance. (Tr. 50-51, 63-65)

### **Character Evidence**

In 2011, Applicant received an outstanding rating from his employer for his work in Afghanistan as a linguist. (AE A) In 2011, Applicant received letters of recommendation from two Army first lieutenants and a captain lauding his hard work, dedication, initiative, and contributions to mission accomplishment. (AE B-D) He received two certificates of appreciation for his service in Afghanistan and a certificate from his employer for “wounds received in action” during his Afghanistan service. (AE E, F, H) He provided a certificate for completing his pre-deployment training in 2010. (AE G)

Applicant’s live-in girlfriend described him as very honest, trustworthy, responsible, reliable, generous, and a “genuinely good man.” (Tr. 31-32) He is dedicated to his family and provides financial support to them. (Tr. 32) He is loyal to the United States. (Tr. 32) Applicant is currently living on unemployment compensation. (Tr. 34) Applicant would like to have a security clearance so he can work in role play, as a cultural advisor, or as a linguist. (Tr. 38-40)

Applicant’s nephew is a linguist, who has served in Afghanistan and holds a security clearance. (Tr. 36-37) He believes Applicant will be a valuable asset to the U.S. Government, and he lauded Applicant’s honesty and reliability. (Tr. 37-39)

### **Afghanistan**

Afghanistan is a country in Southwestern Asia. It is approximately the size of Texas (249,935 square miles). Pakistan borders it on the east and the south. Iran borders it on the west and Russia to the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. In 2009, the population was about 28 million people with about 3,000,000 Afghans living outside Afghanistan.

Afghanistan is presently an Islamic Republic with a democratically elected president. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union withdrew from Afghanistan, 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 including al-Qaeda, the “Haqqani Network,” Lakshar-e-Tayyiba (LET), and the Taliban 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. During 2012, insider or “green on blue” attacks by Taliban infiltrators or terrorists disguised as allied soldiers caused many deaths. At this time, the risk of terrorist activities remains extremely high. The country’s human rights record remains poor, corruption is widespread, 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.

The United States-Afghan relationship is summarized as follows:

After the fall of the Taliban, the U.S. supported the emergence of a broad-based government, representative of all Afghans, and actively encouraged a [United Nations] role in the national reconciliation process in Afghanistan. The U.S. has made a long-term commitment to help Afghanistan rebuild itself after years of war. The U.S. and others in the international community currently provide resources and expertise to Afghanistan in a variety of areas, including humanitarian relief and assistance, capacity-building, security needs, counter-narcotic programs, and infrastructure projects.

During his December 1, 2009 speech at West Point, President Barack Obama laid down the core of U.S. goals in Afghanistan: to disrupt, dismantle, and defeat al-Qaeda and its safe havens in Pakistan, and to prevent their return to Afghanistan. . . . [T]he United States plans to remain politically, diplomatically, and economically engaged in Afghanistan for the long term.

U.S. Department of State, Background Note: Afghanistan, Nov. 28, 2011, at 13. In 2012 and 2013, the United States had more combat troops deployed to Afghanistan than to any other foreign country. On May 28, 2014, President Obama emphasized the importance of Afghanistan to our national security in a speech to the U.S. Corps of Cadets at West Point, New York:

We are winding down our war in Afghanistan. Al Qaeda's leadership on the border region between Pakistan and Afghanistan has been decimated, and Osama bin Laden is no more. . . . We need partners to fight terrorists alongside us. And empowering partners is a large part of what we have done and what we are currently doing in Afghanistan. . . . Together with our allies, America struck huge blows against al Qaeda core and pushed back against an insurgency that threatened to overrun the country. But sustaining this progress depends on the ability of Afghans to do the job. And that's why we trained hundreds of thousands of Afghan soldiers and police. Earlier this spring, those Afghan forces secured an election in which Afghans voted for the first democratic transfer of power in their history. And at the end of this year, a new Afghan President will be in office and America's combat mission will be over.

On May 2, 2012, the United States and Afghanistan signed the Enduring Strategic Partnership Agreement. This agreement demonstrates the United States' long-term commitment to strengthen Afghanistan's sovereignty and stability, in support of the goal of suppression of terrorism. The United States' extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to its citizens and residents of Afghanistan and Afghan Government problems developing and complying with the rule of law. The United States and Afghan Governments are in the final process of establishing an agreement that will govern their relationships, cooperation, training, and support in the ongoing war against terrorism.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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 Exec. Or. 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 *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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and

“(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in his credit report and SOR response. The SOR alleges 15 delinquent debts totaling \$37,176. Many of the debts have been delinquent more than five years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>3</sup> and

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<sup>3</sup>The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).



(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions. He did not provide sufficient information about his finances to establish his inability to make greater progress paying his creditors. His underemployment and unemployment damaged his finances and are circumstances largely beyond his control; however, he did not act responsibly under the circumstances. When he had employment as a linguist, he did not establish payment plans or address his delinquent SOR debts. He presented insufficient evidence about what he has done to pay his SOR debts or his other debts.

Applicant did not provide any of the following documentation relating to the SOR debts: (1) proof of payments such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact with the creditor;<sup>4</sup> (3) a credible debt dispute; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these SOR debts; (5) evidence of financial counseling; or (6) other evidence of progress or resolution of his SOR debts.

Applicant's failure to prove that he has made more substantial steps to resolve his debts shows a lack of judgment and responsibility that weighs against approval of

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<sup>4</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

his security clearance. There is insufficient evidence that he was unable to make greater progress resolving his delinquent debts, or that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that any financial consideration mitigating conditions are established.

## **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates 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.

Applicant’s mother, two brothers, three sisters, three brothers-in-law, and two sisters-in-law are citizens and residents of Afghanistan. He communicates with his mother and one of his siblings about once a month. He provided about \$18,000 over the last 17 years to his family in Afghanistan. He is close to his family in Afghanistan, and he provided funds for their medical and travel. In the last three years, he provided about \$1,000 for his mother’s medical treatment.

There are widely-documented safety issues for residents of Afghanistan because of terrorists and insurgents. Applicant has voluntarily shared in those dangers, and he is willing to do so in the future. Hundreds of Afghan linguists, supporting U.S. forces, have family living in Afghanistan. Thousands of U.S. and coalition armed forces and civilian contractors serving in Afghanistan are targets of terrorists or the Taliban, along with

Afghan civilians who support the Afghan Government and cooperate with coalition forces.

The mere possession 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 significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely-accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in counterinsurgency, terrorists cause a substantial amount of death or property damage, 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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

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 possible 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 familial relationship with family in Afghanistan creates a potential conflict of interest because Applicant may make decisions to protect his family in Afghanistan. Department Counsel produced substantial evidence of Applicant's contacts with family in Afghanistan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists one condition that could mitigate foreign influence security concerns. AG ¶ 18(b) states, “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.”

A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant immigrated to the United States in 1982, when he was nine years old, and in 1999, he was naturalized as a U.S. citizen. He served as a linguist for a total of 16 months in Afghanistan with the U.S. Army, and he was wounded during his service in Afghanistan. Applicant’s years of support to the U.S. Army in Afghanistan as a linguist, including the dangers that service entailed, weigh towards mitigating foreign influence security concerns. Applicant is willing to return to Afghanistan to assist U.S. Armed Forces in a dangerous combat environment. He has offered to continue to risk his life to support the United States’ goals in Afghanistan. He has shown his patriotism, loyalty, and fidelity to the United States.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in Afghanistan. There is no evidence, however, that terrorists, criminals, the Afghan Government, or those conducting espionage have approached or threatened Applicant or his family in Afghanistan to coerce Applicant for classified or sensitive information.<sup>5</sup> As such, there is a reduced possibility that Applicant or his family living in Afghanistan would be specifically selected as targets for improper coercion or exploitation. On the other hand, Applicant and his family living in Afghanistan, like every other resident living in Afghanistan, are at risk from terrorists and the Taliban whenever they are in that country.

While the Government does not have any burden to prove the presence that Applicant or his family has been targeted by terrorists, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States’ huge investment of manpower and money in Afghanistan, and Applicant has supported U.S. goals and objectives in Afghanistan. Applicant and his family in Afghanistan are potential targets of terrorists and the Taliban, and Applicant’s potential access to classified information could theoretically add risk to them from lawless elements in Afghanistan.

In sum, Applicant’s connections to family in Afghanistan are significant; however, his connections to the United States are strong. His employment in support of the U.S. Government, performance of linguist duties in a combat zone, and 32 years of living in the United States are important factors weighing towards mitigation of security concerns. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B. Foreign influence concerns under Guideline B are mitigated.

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<sup>5</sup>There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

## 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 the 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 Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant presented some important evidence weighing towards approval of his access to classified information. Applicant immigrated to the United States in 1982, when he was nine years old. In 1999, he became a U.S. citizen and took an oath of allegiance to the United States. Applicant provided three letters from Army officers, establishing his dedication, loyalty, responsibility, contributions to mission accomplishment, and trustworthiness supporting the U.S. Army as a linguist in combat operations in Afghanistan. He was injured while serving in Afghanistan, and he is willing to continue to risk his life as part of his duties on behalf of the U.S. combat forces in Afghanistan. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant does not own property in Afghanistan.

Applicant's live-in girlfriend and nephew praise Applicant's honesty, trustworthiness, responsibility, reliability, generosity, loyalty and dedication to his family. They believe he can contribute valuable service to the United States and support approval of a security clearance for him.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there.<sup>6</sup> Afghanistan is a dangerous place because of violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the Afghan Government, the interests of the United States, U.S. Armed Forces, and

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<sup>6</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

those who cooperate and assist the United States. The Afghan Government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Afghan Governments are allies in the war on terrorism. The United States is committed to the establishment of a free and independent Afghan Government. Afghanistan and the United States have close relationships in diplomacy and trade.

The financial evidence against approval of Applicant's clearance is more substantial than the evidence supporting approval of his security clearance. Applicant has a history of financial problems. Some of his debts have been delinquent for more than five years. When he was working as a linguist, he had the funds available to pay some or all of his debts. Instead, he gave money to his friends and spent carelessly and imprudently. The SOR alleges and he admits responsibility for 15 delinquent debts totaling \$37,176. Three delinquent SOR debts were for less than \$200 each. He failed to provide sufficient documentation of progress to resolve his financial problems. His failure to provide more corroborating documentation as outlined in the Financial Considerations section, *supra*, shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards resolving his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence concerns are mitigated; however, financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

## 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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.o:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a to 2.e:	For Applicant
Subparagraphs 2.f to 2.h:	Withdrawn
Subparagraph 2.i:	For Applicant
Subparagraph 2.j:	Withdrawn

## 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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Mark Harvey  
Administrative Judge