



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



In the matter of: )  
)  
) ISCR Case No. 14-02559  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Strzelczyk, Esq., Department Counsel  
For Applicant: *Pro se*

12/18/2015

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant is a naturalized U.S. citizen from Afghanistan. He has mitigated the foreign influence concerns raised by his relationship with his wife and stepdaughter who are citizens of Mexico, now living in the United States as permanent residents. Although Applicant has indicated affection for Mexico and Afghanistan, Applicant has not engaged in any conduct to suggest an actual preference for either country over the United States. Clearance is granted.

**Statement of the Case**

On August 25, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and foreign preference guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> The hearing was initially scheduled in the state where Applicant worked, but was continued when Applicant moved back to his home state. On July 22, 2015, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.<sup>3</sup> The parties complied with the terms of the order.<sup>4</sup> At the hearing convened on August 12, 2015, I admitted Government's Exhibits (GE) 1 through 3, without objection. After the hearing, Applicant timely submitted AE A and B, which were also admitted without objection.<sup>5</sup> I received the transcript (Tr.) on August 20, 2015.

### **Findings of Fact**

Applicant, 53, has worked as a cultural advisor for federal contracting companies since 2009. He worked for his current employer from 2009 to 2014, returning in March 2015 after briefly working for another federal contracting company. Born in Afghanistan, Applicant immigrated to the United States in 1987 as a refugee with his mother and sisters. Applicant became a naturalized U.S. citizen in November 2008.<sup>6</sup>

From 1995 to 2009, Applicant worked as taxi driver. Applicant met his wife, a citizen of Mexico, while attending a wedding in a Mexican city just over the border from the U.S. city where Applicant resided. They married in 2007. Because neither Applicant nor his wife possessed the proper immigration status to live in the other's country, they lived separately. After obtaining U.S. citizenship in 2008, Applicant moved to Mexico to live with his wife and commuted to his job in the United States. They lived in the home that Applicant's wife inherited from her parents. She owns the home, valued at approximately \$150,000, with her five siblings.<sup>7</sup> Applicant lived in Mexico until he accepted his first job with a federal contractor in September 2009.<sup>8</sup>

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<sup>2</sup> Correspondence regarding the conversion of the case from an administrative determination to a hearing is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> The prehearing scheduling order is appended to the record as HE II.

<sup>4</sup> The discovery letter, dated July 6, 2015 is appended to the record as HE III.

<sup>5</sup> Correspondence regarding Applicant's post-hearing submissions are appended to the record as HE IV.

<sup>6</sup> Tr. 18-22; GE 1.

<sup>7</sup> Tr. 22-24, 38-45; GE 3.

<sup>8</sup> These facts are supported by AE A and B. Accordingly, the SOR ¶¶ 1.c and 2.c are amended to conform to the evidence in the record.

As a requirement of his new job, Applicant moved to another state and lived in the barracks on the military base where he worked. In September 2010, Applicant was able to sponsor his wife and stepdaughter's immigration to the United States.<sup>9</sup> Together, they resided in the community near Applicant's job. Applicant's stepdaughter lived in the home for approximately four months before she moved to another state with her husband. In March 2015, Applicant and his wife moved to a city in Applicant's home state. Applicant's wife intends to become a naturalized as soon as she is eligible.<sup>10</sup>

In 2010 and 2012, Applicant underwent counterintelligence (CI) screenings. According to Applicant, these screenings were conducted periodically so that he could maintain his access to the military base where he worked. At the conclusion of both reviews, the investigators assessed Applicant to be a counterintelligence risk based on a possible foreign preference. During the 2010 interview, Applicant expressed loyalty to Afghanistan. In the 2012 interview, he expressed loyalty to Mexico over the United States. In neither the 2010 nor 2012 interviews did the investigator ask Applicant to explain or expound on his statements of allegiance. In the 2012 interview, Applicant did not complete the Central and South American organization membership questionnaire as he did during the 2010 CI assessment. Despite the adverse CI risk assessments, Applicant maintained his access to the military base during the term of his employment without interruption.<sup>11</sup>

Applicant has not returned to Afghanistan since 1982, when his family first fled to Pakistan before being granted refugee status in the United States. He does not own property in that country. He does not have contacts with citizens or residents of Afghanistan or Mexico, aside from his wife and stepdaughter. Although his wife retains her ownership interest in property in Mexico, Applicant does not plan to live there in the future. Aside from being conscripted into public service in Afghanistan in 1980, at age 18, neither Applicant nor his family or friends currently belong to or associate with any political, military, or paramilitary groups operating in Afghanistan or Mexico.<sup>12</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 to be 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, administrative judges apply the guidelines in

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<sup>9</sup> The SOR alleges Applicant's sponsorship of his wife's and step-daughter's immigration to the United States as disqualifying. It is not; however, it can be used as evidence of the strength of ties between Applicant and his foreign national relatives.

<sup>10</sup> Tr. 19-20, 23-24, 36; AE A-B.

<sup>11</sup> Tr. 33-35, 52-55; GE 2-3.

<sup>12</sup> Tr. 45-52; GE 2-3.

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, the 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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

### **Foreign Influence**

"[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or 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."<sup>13</sup> Applicant's wife and step-daughter are citizens of Mexico. Applicant lived with them in Mexico for 10 months between November 2008 and September 2009. These relationships potentially create a

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<sup>13</sup> AG ¶ 6.

conflict of interest between Applicant's obligation to protect sensitive information and the desire to help a foreign person, group, or country by providing that information.<sup>14</sup>

However, the evidence in the record mitigates these concerns. Because Applicant's foreign relatives now reside in the United States, the security implications of their relationships has changed. Now, it is unlikely that Applicant will be placed in a position of having to choose between the interest of a foreign individual, group, organization or government and the interests of the United States.<sup>15</sup> While Applicant's wife retains her property interests in Mexico, it is not established that these interests are a material benefit, financial or otherwise, to Applicant. As such, it is unlikely that his wife's property interest could result in a conflict or be used effectively to influence, manipulate, or pressure him.<sup>16</sup>

### **Foreign Preference**

A foreign preference exists when an individual acts in such a way as to indicate a preference for a foreign country or government over the United States. The concern is that the individual may be prone to provide information or make decisions that are harmful to the United States. After becoming a naturalized U.S. citizen, Applicant lived in Mexico for less than a year with his wife. Residency in a foreign country alone is not enough to invoke the disqualifying conditions under this guideline.<sup>17</sup> An applicant must also engage in some kind of activity to obtain citizenship in a foreign country or accept benefits from another country. Applicant engaged in no such conduct. Here, Applicant used the privilege afforded to him by his U.S. citizenship to live in another country with his wife when she did not have the legal status to reside in the United States.

The SOR also alleges that Applicant expressed a foreign preference to other countries over the United States. During CI interviews in 2010 and 2012, Applicant expressed loyalty to Afghanistan and Mexico, respectively. These statements are enough to establish a *prima facie* case of foreign preference against Applicant.<sup>18</sup> However, these statements of allegiance fall well short of expressing a desire to renounce his U.S. citizenship or a willingness to bear arms for another country. Furthermore, Applicant has not engaged in any conduct to indicate an actual foreign preference for any other country. He has not returned to Afghanistan in 28 years and has no plans to do so. He has no connections to that country of security significance. He has not tried to obtain Mexican citizenship; nor has he accepted benefits from the Mexican government. When the CI interviews are read in their entirety, Applicant's statements are akin to expressions of affection, not those of preference.

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<sup>14</sup> AG ¶ 7(b).

<sup>15</sup> AG ¶ 8(b).

<sup>16</sup> AG ¶ 8(f).

<sup>17</sup> See, e.g. AG ¶¶ 10(a) – (c).

<sup>18</sup> AG ¶ 10(a).

I have no doubts about Applicant's ability to protect and handle classified information. In reaching this conclusion, I have considered the whole-person factors in ¶ 2. While Applicant may have feelings of affection for Afghanistan and Mexico, he does not have divided loyalties between the United States and any other country. Based on the record, I conclude that Applicant has mitigated the foreign influence and foreign preference 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, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Foreign Preference:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

### **Conclusion**

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

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Nichole L. Noel  
Administrative Judge