DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
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	)	
Applicant for Security Clearance	)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

06/15/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding personal conduct, foreign influence, financial considerations, and alcohol consumption. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On September 30, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On July 30, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the

[1] GE 1 (e-QIP, dated September 30, 2013).

Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline E (Personal Conduct), Guideline B (Foreign Influence), Guideline F (Financial Considerations), and Guideline G (Alcohol Consumption), and detailed reasons why the DOD CAF could not make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR, as there is no receipt in the case file. In a statement, dated and notarized on August 7, 2014, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.[2] However, on August 25, 2014, pursuant to ¶ E3.1.7 of the Additional Procedural Guidance of Enclosure 3, of the Directive, Department Counsel requested a hearing before an administrative judge.[3] On September 25, 2014, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on October 14, 2014. A Notice of Hearing was issued on October 27, 2014. I convened the hearing, as scheduled, on November 18, 2014.

During the hearing, 7 Government exhibits (GE 1 through GE 7) and 11 Applicant exhibits (AE A through AE K) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on November 26, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted one document, which was marked as AE L and admitted into evidence without objection. The record was closed on November 21, 2014.

Rulings on Procedure

At the commencement of the hearing, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Islamic Republic of Afghanistan (Afghanistan), appearing in six U.S. Government publications. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Afghanistan in selected pages of publications of the U.S. Department of State,[4] the U.S. Department of Defense,[5] and the Congressional Research Service.[6]

[2] Applicant's Answer to the SOR, dated August 7, 2014.

[3] Joint Exhibit I (Memorandum, dated August 25, 2014).

[4] U.S. Department of State, Bureau of Counterterrorism, Country Reports: South and Central Asia, *Country Reports on Terrorism 2013*, (*Chapter 2),* undated*;* U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Afghanistan (Executive Summary),* undated; U.S. Department of State, Bureau of Consular Affairs, *Afghanistan Travel Warning*, dated September 5, 2014; U.S. Department of State, Bureau of Consular Affairs, Afghanistan Alerts & Warnings, dated March 21, 2014.

[5] U.S. Department of Defense, *Report on Progress Toward Security and Stability in Afghanistan*, dated November 2013.

[6] Congressional Research Service, Library of Congress*, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, dated October 23, 2013.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,[7] as set forth below under the Afghanistan subsection.

Findings of Fact

In his Answer to the SOR, Applicant admitted a number of the factual allegations pertaining to personal conduct and alcohol consumption in the SOR (¶¶ 1.a., 1.c. through 1.e., 1.g. through 1.i., 4.a., and a portion of 1.m.); all of the allegations pertaining to foreign influence (¶¶ 2.a. through 2.c.); and one of the allegations pertaining to financial considerations (¶ 3.a.). He either denied or failed to specifically admit or deny the remaining allegations.[8] Applicant's admissions and other comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 48-year-old prospective employee of a defense contractor. While he was hired as a linguist in September 2013, he is awaiting his security clearance. He was an unemployed care-giver for his father from 2002 until 2008, and from 2008 until 2013, he was a part-time bookkeeper.[9] Applicant never served in the U.S. military or any other military.[10] Applicant graduated from high school in July 1985.[11] In 2006, he completed educational requirements for a real estate license.[12] He has never held a security clearance.[13] Applicant was married the first time in November 1997, and divorced in July 1998; and the second time in February 2001, and divorced in September 2009.[14]

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[7] Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. *See, e.g*. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). Tr. at 29-35.

[8] Because of a typographical error, SOR ¶ 3 omitted a subparagraph 3.m., and went directly from 3.l. to 3.n. *See* Tr. at 16.

[9] GE 1, *supra* note 1, at 12-15.

[10] GE 1, *supra* note 1, at 17.

[11] GE 1, *supra* note 1, at 11.

[12] GE 1, *supra* note 1, at 12.

[13] GE 1, *supra* note 1, at 38.

[14] GE 1, *supra* note 1, at 19-20.

Personal Conduct & Alcohol Consumption

Applicant purportedly has a lengthy history of criminal or inappropriate conduct and alcohol abuse involving police and judicial authorities which, for the purposes of this security clearance review, has been characterized as personal conduct and alcohol consumption. He was convicted of some charges and other charges have been dismissed. Those incidents commenced in 1986 and continued until as recently as 2013. The alleged incidents were varied, with some involving alcohol and driving violations, others were purely criminal in nature, and others involved alleged deliberate falsifications on a personnel security questionnaire and during an interview with an investigator from the U.S. Office of Personnel Management (OPM). The SOR alleged 14 such incidents.

(SOR ¶ 1.a.): In January 1986, Applicant was working as a cashier at an Indian-owned convenience store located across the street from the local high school when several students were caught shoplifting. The owner chased them out with a baseball bat. The police arrived and both Applicant and the owner were arrested and charged with assault with a deadly weapon.[15] The charge was dismissed in furtherance of justice, but Applicant was convicted of disturbing the peace for using offensive words. He was fined an unspecified amount.[16]

(SOR ¶ 1.b.):[17] In January 1987, Applicant was purportedly charged with assault with a deadly weapon. The charge was apparently reduced in court to brandishing a deadly weapon (other than a firearm).[18] While the minimum sentence for the reduced charge is 30-days in the county jail, Applicant was convicted of the reduced charge and sentenced to probation for six months, and he was fined an unspecified amount.[19] Applicant denied any knowledge of, or involvement in, the incident.[20]

(SOR ¶ 1.c.): At some point in late 1990, Applicant was injured at work and placed on temporary disability. Once he returned to work, the disability checks were to have ceased, but they continued coming and Applicant continued cashing them.[21] In March 1991, Applicant was charged with false statement to obtain aid.[22] The charge was apparently reduced in court to forgery. Applicant was convicted of the reduced

[15] Tr. at 49-50; Applicant's Answer to the SOR, *supra* note 2, at 1; GE 4 (Federal Bureau of Investigation (FBI) Identification Record, dated September 30, 2013), at 2.

[16] GE 4, *supra* note 15, at 2.

[17] Department Counsel conceded that the allegation in SOR ¶ 1.b. was not referenced in GE 4. *See* Tr. at 51.

[18] GE 4, *supra* note 15, at 2.

[19] GE 4, *supra* note 15, at 2.

[20] Tr. at 51; Applicant's Answer to the SOR, *supra* note 2, at 1.

[21] Tr. at 52; Applicant's Answer to the SOR, *supra* note 2, at 1-2.

[22] GE 4, *supra* note 15, at 2; Tr. at 52.

charge and sentenced to probation for five years, and he was ordered to pay restitution.[23]

(SOR ¶¶ 1.d. and 4.a.): In about February 1995, Applicant was charged with driving while intoxicated (DWI).[24] There is no evidence as to the circumstances that led to the charge. Applicant was apparently convicted of the charge, and he was sentenced to unsupervised probation for one year, ordered to attend a Mothers Against Drunk Driving (MADD) program, and required to abstain from alcohol.[25] He successfully completed his sentence.[26]

(SOR ¶ 1.e.): At some point in late 1997 or early 1998, Applicant filed for divorce from his first wife. His wife was so upset that she reported to the police that he had slapped her and prevented her from calling the police.[27] As a result, in January 1998, Applicant was charged with assault.[28] An investigation ensued, and in January 1999, the charge was dismissed.[29]

(SOR ¶¶ 1.f. and 4.a.): In about April 1998, after he had finished dinner, including some wine, while Applicant was driving, he was stopped for speeding and later charged with DWI. He did not undergo any alcohol tests. He was taken into custody, and after spending the night in jail, he was released and his $500 bond was returned. The charge was dismissed. Other than Applicant's comments regarding the incident, there is no other evidence to support the allegation, and the FBI Identification Record does not reflect the incident.[30]

(SOR ¶¶ 1.g. and 4.a.): In about August 2001, Applicant was charged with DWI 3rd offense.[31] There is no evidence as to the circumstances that led to the charge. Applicant was convicted of the reduced charge, DWI 2nd offense, and he was sentenced to serve four days in jail, fined $2,000, and his operator's license was suspended.[32]

[23] GE 4, *supra* note 15, at 2; Tr. at 53.

[24] Tr. at 53; Applicant's Answer to the SOR, *supra* note 2, at 2.

[25] Tr. at 53-54.

[26] Tr. at 55.

[27] Tr. at 55.

[28] GE 4, *supra* note 15, at 2.

[29] GE 4, *supra* note 15, at 2; Applicant's Answer to the SOR, *supra* note 2, at 2; Tr. at 55.

[30] Tr. at 58-59.

[31] GE 4, *supra* note 15, at 3; Applicant's Answer to the SOR, *supra* note 2, at 2; Tr. at 59-60.

[32] GE 4, *supra* note 15, at 3; Tr. at 60-61.

(SOR ¶¶ 1.h. and 4.a.): In about January 2003, and again in about March 2003, Applicant was charged with two separate DWI 3rd offenses.[33] There is no evidence as to the circumstances that led to the charges. Both charges were tried together in July 2004. Applicant was convicted of the charges, and he was sentenced to serve probation for ten years, fined $5,000 per charge, required to wear an ankle bracelet to monitor his blood level for 36 months (the requirement ended after one year), required to install a breathalyzer in his vehicle, ordered to attend 90 meetings of Alcoholics Anonymous (AA), and required to attend an anger management class.[34] Applicant successfully completed his probation and community supervision in July 2014. Furthermore, instead of merely completing 200 hours of community service, he completed 1,400 hours.[35]

(SOR ¶ 1.i.): Over a period of time, Applicant's then-employer, a principal in a law firm, owed Applicant's adoptive father in excess of $67,000. A series of promissory notes and agreements were agreed to in 2000, and the borrower was to repay the monies by February 23, 2001. He failed or refused to do so. Applicant left his employer to care for his adoptive father who was very ill. Applicant repeatedly requested repayment by telephone, facsimile, and e-mails, but his requests were ignored. In January 2003, Applicant's adoptive father's attorney formally requested repayment and indicated that if it was not resolved, a lawsuit would follow.[36] In June 2005, the borrower filed charges against Applicant for harassment.[37] It is unclear as to what transpired next. At some point, Applicant was either placed on probation or issued a restraining order. Eventually, because he was not earning any salary and was a full-time care-giver for his adoptive father, Applicant called the borrower and begged for some money. He was subsequently charged with violating the terms of the probation/restraining order, and in October 2007, he was convicted of harassment and probation violation. He was sentenced to 180 days in jail and placed on probation for nine months. He was released from jail after 30 days.[38] Because the borrower had managed to delay repayment until the state of limitations had run, the loan was never repaid.[39]

(SOR ¶¶ 1.j. and 4.a.): Applicant rented a room in the residence of his employer/landlord from June 2008 until December 2012.[40] Over time, some disputes broke out between the landlord and Applicant, and in late November 2012, the landlord called the police to report that Applicant had been drinking the night before and had

[33] GE 4, *supra* note 15, at 3; Applicant's Answer to the SOR, *supra* note 2, at 2; Tr. at 62.

[34] GE 4, *supra* note 15, at 3; Tr. at 62-63.

[35] AE B (Orders Discharging Defendant From Community Supervision, dated July 23, 2014); Tr. at 65, 82-83.

[36] AE A (Letter, dated January 7, 2003); AE A (Promissory Note, dated February 23, 2000); AE A (Two Agreements, dated June 5, 2000 and August 1, 2000); Applicant's Answer to the SOR, *supra* note 2, at 2; Tr. at

[37] GE 4, *supra* note 15, at 4; Tr. at 69-71; Applicant's Answer to the SOR, *supra* note 2, at 2.

[38] GE 4, *supra* note 15, at 4; Tr. at 71-72.

[39] GE 1, *supra* note 1, at 41.

[40] GE 1, *supra* note 1, at 10.

been harassing the landlord. The police and Applicant's probation officer responded and found Applicant asleep in his room. Applicant took a test for alcohol consumption and the test registered negative. The landlord also identified a new vehicle purportedly belonging to Applicant. The vehicle did not have an alcohol interlocking device. The car was actually the landlord's and not Applicant's. The police officer and the probation officer instructed the landlord not to touch Applicant's property, consisting of paintings, clothing, jewelry, and other items, and that the police would escort Applicant to the residence over the next few days to retrieve his property. Nevertheless, the landlord's nephew moved the property to a storage unit outside the property. Applicant sued the landlord for theft of some of his property, and the landlord's attorney subsequently called the probation officer in an effort to have Applicant's probation revoked, and have him sent to another state, but the effort was rejected.[41] Other than the exculpatory affidavit of the probation officer in support of Applicant, there is no evidence to support the allegations in SOR ¶¶ 1.j. and 4.a.

Applicant has never been diagnosed with alcohol dependence or alcohol abuse.[42] He has abstained from using alcohol since the day after his most recent DWI arrest in March 2003 – over 12 years ago. Before his two DWIs in 2003, Applicant had never been in any type of alcohol-related treatment or counseling, other than his attendance at the MADD program. Since the 2004 court mandate to attend AA, Applicant has continued to attend AA meetings, giving speeches, sponsoring, and generally participating in AA where he has gone through the 12-step program. He last attended an AA meeting the morning before the security clearance hearing. He keeps his sobriety token on the dashboard of his car.[43]

(SOR ¶¶ 1.k., 1.l., and 1.n.): On September 30, 2013, when Applicant completed his e-QIP, he responded to certain questions pertaining to his employment activities and foreign business, professional activities, and foreign government contacts. The question in Section 13A asked him to list all of his employment activities, including unemployment and self-employment, over the most recent ten year period.[44] The question in Section 20B asked him if, in the past seven years, he had provided advice or support to any individual with a foreign business or other foreign organization that he had not previously listed as a former employer.[45] Applicant did not include one particular company in response to Section 13A, and he answered "no" to the remaining question.[46] He certified that the responses were "true, complete, and correct" to the best of his knowledge and belief, but the responses to those questions may, in fact, have been false. In addition, when Applicant was interviewed by an OPM investigator, he was supposed to list all his employers from an unspecified date to the date of the interview.

[41] Tr. at 64-69; Applicant's Answer to the SOR, *supra* note 2, at 2; AE K (Affidavit, dated October 23, 2013).

[42] Tr. at 85.

[43] Tr. at 82-87; Applicant's Answer to the SOR, *supra* note 2, at 4; AE E (Letter, dated August 28, 2014).

[44] GE 1, *supra* note 1, at 12.

[45] GE 1, *supra* note 1, at 31.

[46] GE 1, *supra* note 1, at 12-16, 31.

Once again, as he had done in response to Section 13A, he did not include one particular company.[47]

The SOR alleged that Applicant intentionally falsified and/or omitted information related to Applicant's relationship with that one particular company. Applicant denied intentionally falsifying material facts in either his e-QIP or during his OPM interviews, and he explained that relationship. One of Applicant's nephews, a translator for the U.S. Army, recommended that he get in touch with an Afghan company that had a contract with the U.S. armed forces. While Applicant considered seeking employment with the company, he chose not to do so because it was not enforcing child labor protections. However, he did speak with a representative while he was in Afghanistan and offered some advice regarding website design and business issues. Applicant referred the company to a website designer and an attorney in the United States. There was no employment contract or agreement between Applicant and the company. Nevertheless, while neither the company nor Applicant considered him to be an employee of the company, but merely a consultant or advisor, Applicant was compensated for his efforts on the company's behalf, and in 2012, he was paid about $10,000, partially by check and partially in cash. Despite an aggressive cross-examination by Department Counsel, Applicant steadfastly denied that he was ever an employee of the company, but did concede that he made an innocent mistake or error in responding to Section 20B.[48]

(SOR ¶ 1.m.): Another question in Applicant's e-QIP was in Section 26 which asked if, in the last seven years, he had bills or debts turned over to a collection agency.[49] Applicant answered "no" to the question.[50] However, in response to another question in the same section, Applicant acknowledged having had his debts discharged under a Chapter 7 bankruptcy in 2008,[51] well within the seven year period. He certified that the responses were "true, complete, and correct" to the best of his knowledge and belief. The response to the particular question regarding collections was, in fact, false for Applicant had omitted multiple accounts that were placed for collection. He subsequently denied he had falsified material facts and explained that some of his accounts were discharged in bankruptcy and his medical accounts should have been covered by the hospital's indigent program.[52]

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[47] GE 2 (Counterintelligence-Focused Security Screening Questionnaire, dated October 31, 2013), at 1-2.

[48] Applicant's Answer to the SOR, *supra* note 2, at 2-3; Tr. at 97-111. Applicant was apparently interviewed on two separate occasions by the OPM investigator. He referred to himself as a consultant during the first interview, and when the issue of Applicant's relationship with the company arose during the second interview, Applicant contended he offered to again explain that relationship, but since he was not an "employee" of the company, when he offered to do so, the investigator was not interested in hearing Applicant's explanation. *See* Tr. at 108-111. It should be noted that neither a transcript nor a summary of the interviews was offered as evidence. Furthermore, based on Applicant's testimony and the fact that there was no contradictory evidence, Department Counsel accepted Applicant's testimony related to SOR ¶1.n. *See* Tr. at 112-113.

[49] GE 1, *supra* note 1, at 40.

[50] GE 1, *supra* note 1, at 40.

[51] GE 1, *supra* note 1, at 39.

[52] Applicant's Answer to the SOR, *supra* note 2, at 2.

Financial Considerations

Prior to giving up his job to become his adoptive father's full-time care-giver in 2002, Applicant's finances were unremarkable. Until his father passed away in 2008, although Applicant received no salary, he spent between $3,000 and $5,000 each month just for his father's medication. In addition, his father was in and out of the hospital for six months in five years also at a substantial cost, without health insurance.[53] In the beginning, Applicant had good investments, money in the stock market and with a broker, art, and antiques. His credit cards had zero balances. His father had a little amount of money. Applicant used whatever funds he had available to spend on his father, but after a few years, he started running short and started selling his assets. He simply ran out of money caring for his father and honoring his father's burial request.[54]

(SOR ¶ 3.a.): In August 2006, with insufficient funds and no salary to continue paying any bills, Applicant and his second wife jointly filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.[55] They identified 55 creditors, collection agents, and debt purchasers holding approximately $279,191 in unsecured nonpriority claims.[56] The debts were discharged on August 3, 2007.[57]

Applicant subsequently relocated to another part of the country, where he did part-time work house cleaning, translating, and bookkeeping.[58] In addition to Applicant's bankruptcy, the SOR identified 12 purportedly continuing delinquent debts totaling approximately $18,504 that had been placed for collection or charged off, as reflected by an October 2013 credit report[59] and a May 2014 credit report.[60] Ten of those accounts are medical accounts with creditors whose identity has not been revealed. His SOR-related accounts were as follows:

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[53] Tr. at 22, 72-73.

[54] Tr. at 73-74; Applicant's Answer to the SOR, *supra* note 2, at 3.

[55] GE 7 (Voluntary Petition, dated August 31, 2006); AE D (Schedule F, dated August 31, 2006).

[56] AE D, *supra* note 55. There is some duplication of debts in Appellant's bankruptcy schedule. In a bankruptcy filing, most debtors list potential creditors, even when the debt may have been resold or transferred to a different collection agent or creditor, to ensure notice, and reduce the risk of subsequent dismissal of the bankruptcy. If Appellant failed to list some debts on his bankruptcy schedules, this failure to list some debts does not affect their discharge. Absent fraud, in a no-asset bankruptcy, all unsecured, nonpriority debts are discharged when the bankruptcy court grants a discharge, even when they are not listed on a bankruptcy schedule. *See Judd v. Wolfe*, 78 F.3d 110, 114 (3d Cir. 1996); *Francis v. Nat'l Revenue Service, Inc.*, 426 B.R. 398 (Bankr. S.D. FL 2010), *but see First Circuit Bucks Majority on Discharge of Unlisted Debt in No-Asset Case*, American Bankruptcy Institute, 28-9 ABIJ 58 (Nov. 2009). There is no requirement to re-open the bankruptcy to discharge the debt. *Collier on Bankruptcy*, Matthey Bender & Company, Inc., 2010, Chapter 4-523, ¶ 523(a)(3)(A).

[57] GE 7 (Discharge of Debtor, dated August 3, 2007).

[58] Tr. at 74-75.

[59] GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 2, 2013).

[60] GE 6 (Equifax Credit Report, dated May 30, 2014).

(SOR ¶ 3.b.): There is a bank credit card listed in Applicant's bankruptcy petition, with an unpaid balance of $11,585 (increased to $12,041 when it was transferred or sold to another collection agent), that was discharged in 2008.[61] The account was subsequently transferred or sold in 2009 with a high credit of $12,837 (and a balance of $12,836) that was initially 120 days or more past due and eventually placed for collection with a stated balance of $12,837.[62] The account was again transferred or sold to another collection agent in 2011.[63] Applicant contended the account, regardless of the collection agent, is the same account that was in his bankruptcy petition.[64] The account is not listed in Applicant's 2014 credit report. Although the account was listed in the 2013 credit report, it was actually discharged in bankruptcy in 2008. The account has been resolved.

(SOR ¶ 3.h.): There is a bank credit card listed in Applicant's bankruptcy petition, with an unpaid balance of $400, that was discharged in 2008.[65] The account was subsequently reported as having a past due balance of $347 that was charged off in August 2008.[66] The account was again transferred or sold to another collection agent in 2011.[67] The account is the same account that was in his bankruptcy petition. Although the account was listed in the 2013 and 2014 credit reports, it was actually discharged in bankruptcy in 2008. The account has been resolved.

The remaining SOR-related medical accounts arose after Applicant relocated and developed sinus issues. During his initial visit to the emergency room, Applicant advised the hospital worker that he had no insurance and he was enrolled in the Indigent Health Care Program, which provided essentially free health care services to eligible residents (those with low or no income) through the counties, hospital districts and public hospitals.[68] His eligibility for outpatient/ancillary and inpatient services during extensive periods commencing on August 25, 2010, and periodically continuing through September 17, 2013, was approved, and he was informed that he was not financially responsible for any such services.[69] Nevertheless, the accounts may have been erroneously listed in Applicant's credit reports. He was not aware that there was any issue regarding any of the medical expenses, until he was informed about them during the processing of his security clearance application, because he never received any

[61] AE D, *supra* note 55, at 2.

[62] GE 5, *supra* note 59, at 7, 11.

[63] GE 5, *supra* note 59, at 7, 11.

[64] Tr. at 23, 116-119.

[65] AE D, *supra* note 55, at 4; Tr. at 140.

[66] GE 5, *supra* note 59, at 7; GE 6, *supra* note 60, at 2.

[67] GE 5, *supra* note 59, at 7, 11.

[68] Tr. at 23, 41, 121-122, 132-133; AE L (Indigent/Charity Approval Notice, dated November 19, 2014.

[69] AE L, *supra* note 68.

delinquency notices.[70] Applicant went to the county clinic and the human services office, and he was also referred to the Medicaid office, in an effort to have the accounts resolved. The hospital is investigating the accounts to determine if Applicant has any further financial responsibility. In the event there is, because he is attempting to reestablish his credit, Applicant intends to contact the creditor(s) to resolve any outstanding medical accounts.[71]

Those unpaid medical accounts are listed in the credit reports and in the SOR without any identification of the actual healthcare provider. Several collection agents are identified. The accounts are: SOR ¶ 3.c. for $1,130; SOR ¶ 3.d. for $774; SOR ¶ 3.e. for $667; SOR ¶ 3.f. for $539; SOR ¶ 3.g. for $536; SOR ¶ 3.i. for $311; SOR ¶ 3.j. for $63; SOR ¶ 3.k. for $440; SOR ¶ 3.l. for $410; and SOR ¶ 3.n. for $360.[72] Applicant's most recent credit report, obtained in November 2014, reflects only seven of the ten SOR medical accounts in collection (SOR ¶¶ 3.c., 3.d., 3.e., 3.f., 3.g., 3.i., and 3.j.).[73]

Applicant's average monthly income from his part-time jobs is $1,200. As a result, he periodically receives food stamps – a situation which he finds embarrassing.[74] He presently has a minimal balance in his checking account, and he has no savings, retirement savings, or investments.[75] He has never received financial counseling.[76] Applicant has no other delinquent accounts.[77]

Foreign Influence[78]

Applicant was born in Afghanistan.[79] Both of his parents (his biological father was a shopkeeper, and his mother, a housewife)[80] were born in Afghanistan, and they are deceased.[81] Neither parent ever had any affiliation with the Afghan government, military,

[70] Tr. at 23, 41, 120.

[71] Tr. at 124-125, 135.

[72] GE 5, *supra* note 59, at 11-13; GE 6, *supra* note 60, at 2.

[73] AE C (Credit Karma Credit Report, dated November 17, 2014), at 3.

[74] Tr. at 130.

[75] Tr. at 129.

[76] Tr. at 126.

[77] Tr. at 129.

[78] The facts in this decision do not specifically describe locations, family members, or dates, to protect Applicant and his family's privacy. The cited sources contain more specific information.

[79] GE 1, *supra* note 1, at 5.

[80] GE 3 (Relatives and Associates Chart, dated October 31, 2013), at 1.

[81] GE 3, *supra* note 80, at 1.

or intelligence service.[82] Applicant was raised in Afghanistan, but in 1982 he relocated to Pakistan because of the civil unrest and hostilities during the Soviet invasion and subsequent occupation. After residing in Pakistan as a refugee, at the age of 16, he immigrated to the United States in 1983.[83] Applicant had no contact with his family and was lonely.[84] Several years later, Applicant and an older co-worker, a native-born U.S. citizen, developed a relationship that evolved into a father-son relationship, and Applicant was adopted.[85] Applicant looked at his adoptive father as his father, mother, and siblings all rolled into one person.[86] Applicant became a naturalized U.S. citizen in October 1992.[87]

(SOR ¶ 2.a.): Applicant has three brothers, two of whom are citizens and residents of Afghanistan, and one who is a naturalized U.S. citizen and resident of the United States.[88] One brother in Afghanistan is a shopkeeper, and Applicant does not know what the other brother does.[89] None of his brothers ever had any affiliation with the Afghan government, military, or intelligence service.[90] Applicant last communicated with one brother in Afghanistan in 2002.[91] He used to speak with the other brother in Afghanistan once a year, but no longer has any contact with him.[92] He generally speaks with his brother in the U.S. on a monthly basis.[93]

(SOR ¶ 2.b.): Applicant also has two sisters, both of whom are citizens and residents of Afghanistan.[94] They are both housewives. Neither of his sisters ever had any affiliation with the Afghan government, military, or intelligence service.[95] Applicant last had any contact with one sister in 1998, and he used to communicate with his other

[82] GE 3, *supra* note 80, at 1; GE 1, *supra* note 1, at 21-23.

[83] GE 3, *supra* note 80, at 1; Tr. at 89-90.

[84] Tr. at 22, 48.

[85] Tr. at 49.

[86] Tr. at 49.

[87] GE 1, *supra* note 1, at 8; Tr. at 47.

[88] GE 3, *supra* note 80, at 1; Tr. at 89; GE 1, *supra* note 1, at 25-26.

[89] GE 3, *supra* note 80, at 1.

[90] GE 3, *supra* note 80, at 1.

[91] GE 3, *supra* note 80, at 1.

[92] GE 3, *supra* note 80, at 1; Tr. at 90.

[93] GE 3, *supra* note 80, at 1.

[94] GE 3, *supra* note 80, at 1; Tr. at 90.

[95] GE 3, *supra* note 80, at 1; GE 1, *supra* note 1, at 27-30.

sister on an annual basis on special occasions.[96] Although he briefly resided with one sister when he was in Afghanistan in 2012, he no longer has any contact with her.[97]

(SOR ¶ 2.c.): Although Applicant has varied extended family members who are citizens and residents of Afghanistan, he really does not even know their names because they were all born after he emigrated from Afghanistan over 30 years ago. He has no relationship with them.[98]

Applicant's last contact with his mother was in 1998. In 2004, when she was dying and Applicant was caring for his dying adoptive father, he remained in the U.S. to assist his father rather than going to see his mother.[99] In 2011, because he was still depressed over their deaths, he wanted to go to Afghanistan to visit the graves of his biological father and mother.[100] While in Afghanistan, Applicant resided primarily with his sister and for a period of time with his brother.[101] He felt as though the Afghans treated him as an American. He returned to the United States because he missed the United States, and he has no intention of ever returning to Afghanistan.[102]

During the civil war and the Taliban periods, between 1998 and 2001 - over 15 years ago - some of Applicant's Afghan family members had their houses looted and burned, and one of his sisters relocated to Pakistan for a few years. He tried to assist them by sending them money, estimated as $30,000, but since that time he has not done so.[103] Applicant does not own any real estate or other financial interests in Afghanistan.[104]

Afghanistan

Formerly under the control of the United Kingdom, Afghanistan received independence in August 1919. It has common borders with Pakistan on the east and the south, Iran on the west, and Russia on the north. Afghanistan has had a turbulent political history, including the abolishment of the monarchy in 1973, following a *coup d'état*, invasion by the Soviet Union in 1979, occupation by the Soviet Union until 1989, and civil war between the occupiers and home-grown freedom fighters, known as mujaheddin. Anarchy ensued, and fighting continued among the various ethnic, clan,

[96] GE 3, *supra* note 80, at 1; GE 1, *supra* note 1, at 28-29.

[97] GE 3, *supra* note 80, at 1; Tr. at 90.

[98] Tr. at 32, 90-91, 113-114.

[99] Tr. at 20.

[100] Tr. at 91, 94.

[101] Tr. at 96, 113.

[102] Tr. at 24, 31.

[103] Tr. at 114; GE 2, *supra* note 47, at 11.

[104] GE 1, *supra* note 1, at 31; Tr. at 114; GE 2, *supra* note 47, at 11.

and religious warlords and their respective militias even after the Soviet Union withdrew from the country. By the mid-1990s, the Taliban rose to power and controlled significant portions of the country, imposing repressive policies and Sharia law, guiding all aspects of Muslim life. Afghanistan became a sanctuary for terrorist groups.

After the September 11, 2001 terrorist attacks, the demands by the United States that Afghanistan expel Osama Bin-Laden and his followers were rejected by the Taliban. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power. Following a few years of governance by an interim government, a democratic presidential election took place in October 2004, and a new democratic government took power. Despite the election, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. Terrorists continue to target United States and Afghan interests through suicide bombings, assassinations, and hostage taking.

Afghanistan's human rights record remains poor. There are continuing extrajudicial killings; torture and other abuse; widespread official corruption and impunity; ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; judicial corruption; violations of privacy rights; violence and societal discrimination against women; sexual abuse of children; trafficking in persons; and restrictions on freedoms of religion, the press, assembly, and movement.

Taliban insurgents retain the capability and intent to conduct attacks and kidnappings of Americans, other Western nationals, and members of the local populace. The United States has made a long-term commitment to help Afghanistan rebuild itself after decades of war, and along with others in the international community, provides substantial assistance, focusing on reintegration, economic development, improving relations with Afghanistan regional partners, and steadily increasing the security responsibilities of the Afghan security forces. Furthermore, there is increased terrorist support coming into Afghanistan from Pakistan and Iran. Not only has the security situation remained volatile and unpredictable throughout Afghanistan, but there are also tensions with Afghanistan over limiting U.S. military operations.

The security situation in Afghanistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. In early 2009, the Federally Administered Tribal Areas (FATA), a semi-autonomous tribal region in northwestern Pakistan, continued to provide vital sanctuary to al-Qaida and a number of foreign and Pakistan-based extremist groups. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremists groups, al-Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies.

In 2012, there were a number of insider attacks upon the International Security Assistance Force **(**ISAF**),** a NATO-led security mission in Afghanistan**,** by Afghan

security personnel, also known as "green on blue" attacks. Although such attacks declined in 2012, they continued occasionally in 2013. In addition, in 2013, insurgents conducted a significant number of large vehicle-borne improvised explosive device attacks, targeting coalition forces bases, military convoys, and Afghan government buildings, mostly in southern and eastern Afghanistan. Travel to all areas of Afghanistan remains unsafe due to ongoing military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of insurgent attacks. At the start of 2014, about 38,000 total U.S. personnel are in country, with just over 27,000 of those troops in the ISAF. The remaining U.S. troops are supporting Operation Enduring Freedom.

Character References and Community Service

Several long-standing friends and acquaintances, including his father's pastor, several of his father's doctors, and Applicant's attorney, have characterized Applicant in extremely favorable terms. He is generally referred to as caring, concerned, devoted, attentive, responsible, compassionate, enterprising, sober, and punctual.[105] In addition to his extensive community service, which was well over the court-mandated amount, Applicant spent seven years doing volunteer work at a hospital.[106]

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."[107] 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[108]

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines

[105] AE H (Character Reference, dated July 13, 2004); AE I (Character Reference, dated August 7, 2004); AE J (Character References, various dates); AE E, *supra* note 43.

[106] Tr. at 20; Applicant's Answer to the SOR, *supra* note 2, at 4.

[107] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[108] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[109] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[110]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[111]

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."[112] 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 as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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[109] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[110] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[111] *Egan*, 484 U.S. at 531.

[112] *See* Exec. Or. 10865 § 7.

Analysis

Guideline E, Personal Conduct

The security concern under the guideline for Personal Conduct is set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is a

> deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Under AG ¶ 16(b), security concerns may be raised by "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

Under AG ¶ 16(c), it is potentially disqualifying if there is

> Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Also, it is also potentially disqualifying under AG ¶ 16(e) if there is

> personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

There are allegations of a lengthy history of criminal or inappropriate conduct and alcohol abuse involving police and judicial authorities commencing in 1986, when

Applicant was 19 years old. Over the years he was convicted of disturbing the peace for using offensive words (1986), forgery (1991), DWI (1995, 2001, and twice in 2003), and harassment (2005). Other charges were either unsubstantiated or dismissed. As to those criminal convictions, AG ¶¶ 16(c) and 16(e) have been established.

Other incidents involved alleged deliberate falsifications and omissions on a personnel security questionnaire and during an interview with an OPM investigator. As noted above, when Applicant completed his e-QIP, he responded to certain questions pertaining to his employment activities and foreign business, professional activities, and foreign government contacts. In addition, when Applicant was interviewed by an OPM investigator, he was supposed to list all his employers from an unspecified date to the date of the interview. Once again, as he had done in the e-QIP, he did not include one particular company. The SOR alleged that Applicant intentionally falsified and/or omitted information related to Applicant's relationship with that one particular company. Applicant denied intentionally falsifying material facts in either his e-QIP or during his OPM interviews, and he explained that relationship. There was no employment contract or agreement between Applicant and the company. Nevertheless, while neither the company nor Applicant considered him to be an employee of the company, but merely a consultant or advisor, Applicant was compensated for his efforts. Applicant steadfastly denied that he was ever an employee of the company, but did concede that he made an innocent mistake or error in failing to include his advisory position.

Another question in Applicant's e-QIP asked if, in the last seven years, he had bills or debts turned over to a collection agency. Applicant answered "no" to the question, but in response to another question in the same section, Applicant acknowledged having had his debts discharged under a Chapter 7 bankruptcy in 2008, well within the seven year period. He subsequently denied he had falsified material facts and explained that some of his accounts were discharged in bankruptcy and his medical accounts, about which he had no knowledge of their alleged delinquent status, should have been covered by the hospital's indigent program.

Applicant's responses provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely the result of his misunderstanding of the true facts. I have considered Applicant's background in analyzing his actions. His confusion and resultant actions are understandable and his positions are reasonable. As to the alleged deliberate falsifications and omissions, Applicant denied any deliberate falsification, but he acknowledged having mistakenly omitted his advisory role with one particular company from his e-QIP. As it pertains to the alleged deliberate falsifications, Applicant's credible explanation has refuted AG ¶¶ 16(a) and 16(b).[113] In this instance, I conclude that Applicant's actions do not cast doubt on his reliability, trustworthiness, or good judgment.

[113] The Appeal Board has explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. Under AG ¶ 17(c), personal conduct security concerns may be mitigated where "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Evidence that "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur" is potentially mitigating under AG ¶ 17(d). Also, AG ¶ 17(e) may apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." Similarly, AG ¶ 17(f) may apply if "the information was unsubstantiated or from a source of questionable reliability."

AG ¶¶ 17(c), 17(d), 17(e), and 17(f) all apply. As noted above, over the years Applicant was convicted of disturbing the peace for using offensive words (1986), forgery (1991), DWI (1995, 2001, and twice in 2003), and harassment (2005). Other charges were either unsubstantiated or dismissed. Applicant has acknowledged his problems with drinking and driving, and he has taken a number of positive steps to alter his behavior. He has abstained from alcohol since March 2003 – over 12 years ago. Since the 2004 court mandate to attend AA, Applicant has continued to attend AA meetings, giving speeches, sponsoring, and generally participating in AA where he has gone through the 12-step program. He last attended an AA meeting the morning before the security clearance hearing. His remaining criminal conduct was referred to in the SOR as personal conduct because it occurred so long ago and has not recurred since 2005 – ten years ago. Some of the incidents alleged in the SOR involved offenses that occurred under rather unique circumstances, especially disturbing the peace for using offensive words (1986) and harassment (2005), while other alleged incidents were essentially false charges that were either dismissed or never occurred.

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

> Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline notes several conditions that could raise security concerns, but only one of those conditions might apply. Under AG ¶ 22(a), "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the

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ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005) (citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004)).

individual is diagnosed as an alcohol abuser or alcohol dependent" is potentially disqualifying. AG ¶ 22(a) has been established by Applicant's DWI convictions in 1995, 2001, and twice in 2003.

The guidelines also include examples of conditions that could mitigate security concerns arising from alcohol consumption. Under AG ¶ 23(a), the disqualifying condition may be mitigated where "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." In addition, when "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)", AG ¶ 23(b) may apply.

AG ¶¶ 23(a) and 23(b) both apply. Applicant has never been diagnosed with alcohol dependence or alcohol abuse. He has never failed to follow any court order relating to alcohol. Applicant acknowledged his problems with drinking and driving, and he has taken a number of positive steps to alter his behavior. He has abstained from alcohol since March 2003 – over 12 years ago. He has continued to attend AA meetings, giving speeches, sponsoring, and generally participating in AA where he has gone through the 12-step program. He last attended an AA meeting the morning before the security clearance hearing. After careful consideration of the Appeal Board's jurisprudence on alcohol consumption, I conclude Applicant's alcohol problem has been put behind him and will not recur.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

> 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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant was unable to continue making his routine monthly payments on various accounts. He eventually filed for bankruptcy under Chapter 7 in 2006, and his debts were discharged in 2007. Additional medical accounts subsequently became delinquent. AG ¶¶ 19(a) and 19(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."[114] In addition, AG ¶ 20(e) may apply if "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."

AG ¶¶ 20(a), 20(b), and 20(e) apply, and AG ¶¶ 20(c) and 20(d) partially apply. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, as noted above, Applicant's financial problems started sometime after 2002, after he had quit his job to become the full-time care-giver for his father. Until his father passed away in 2008, Applicant spent between $3,000 and $5,000 each month just for his father's medication. In addition, his father was in and out of the hospital for six months in five years also at a substantial cost, without health insurance. At first, Applicant was able to handle the expenses because he had a good portfolio of investments, money in the stock market and with a broker, art, and antiques. His credit cards had zero balances. As a loving and compassionate son, Applicant used whatever funds he had available to spend on his father, but after a few years, he started running short and started selling his assets. He simply ran out of money caring for his father and honoring his father's burial request. In August 2006, with insufficient funds and no salary to continue paying any bills, Applicant filed for bankruptcy. The debts were discharged in August 2007.

[114] 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 [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

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

Applicant has never received any financial counseling. Nevertheless, all of Applicant's newer accounts are current. Two accounts listed in the SOR were actually discharged in the bankruptcy. It appears that the medical accounts listed in the SOR should have been covered under Applicant's membership in the Indigent Health Care Program which provided essentially free health care services to eligible residents. Applicant is awaiting information to determine if there is a continuing financial liability. He has started rebuilding his credit by opening up some credit cards with small balances and making routine monthly payments. Applicant's newer accounts are current. There are clear indications that Applicant's financial problems are finally under control. Applicant's actions under the circumstances confronting him, do not cast doubt on his current reliability, trustworthiness, or good judgment.[115]

Guideline B, Foreign Influence

The trustworthiness concern relating to the guideline for Foreign Influence is 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.

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 influence and could potentially result in the compromise of classified information.[116] Applicant's relationship with his four siblings and his extended family members in Afghanistan, all of whom remain citizens and residents of Afghanistan, are current security concerns for the Government.

The guideline notes one particular condition that could raise security concerns. Under AG ¶ 7(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" is potentially disqualifying. AG ¶ 7(a) has been established. However, the security significance of this identified condition requires further examination of Applicant's respective relationships with his family members and

[115] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

[116] *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

extended family members who are citizen-residents of Afghanistan, to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where "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." Similarly, AG ¶ 8(b) may apply where the evidence shows "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." In this instance, Applicant's relationship with his extended family members is essentially non-existent. His relationship with one sister, with whom he has had no contact since 1998, and one brother, with whom he has had no contact since 2002, are largely casual, if not non-existent. As to them, AG ¶ 8(c) applies. Applicant's relationships with his other brother and sister in Afghanistan, with whom he has had no contact since 2012, are now not necessarily casual, but they are infrequent. Accordingly, AG ¶ 8(c) only partially applies as it pertains to them.

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances, in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.[117] In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."[118]

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country. In this instance, it is more likely that an indiscriminate Islamist terrorist attack on a public place might cause collateral injury or death to Applicant's siblings rather than a targeted attempt by the Afghan Government to obtain sensitive information from them.

[117] *See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

[118] ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

As noted above, since October 2001, when U.S. forces and coalition partners led military operations in Afghanistan, there has been first an interim government, and then a democratic government in Afghanistan. Nevertheless, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. It is less likely that the Afghan government would attempt coercive means to obtain sensitive information. The real concern in this instance is not the Afghan government, but rather al-Qaida and Taliban terrorists. Applicant's two brothers and two sisters still reside in Afghanistan and there is substantial risk – a "heightened risk" – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. There is no evidence that Applicant's siblings are or have ever been political activists, challenging the policies of the Afghan government; that terrorists have specifically approached or threatened Applicant or his siblings for any reason other than during periods when the Soviets occupied the country and at least one of his siblings fled to Pakistan; that the Afghan government, al-Qaida, or the Taliban have approached Applicant; or that his siblings currently engage in activities that would bring attention to themselves. As such, there is a reduced possibility that he would be a target for coercion or exploitation by the Afghan government, al-Qaida, or the Taliban, which may seek to quiet those who speak out against them.

Applicant has significant connections to the United States, having lived in the United States for over 30 years. His happiest years have been spent in the United States with his adoptive father. He was educated here and considers himself to be more American than Afghan. Applicant wants his security clearance so that he can assist U.S. Armed Forces in their combat and intelligence-gathering missions in Afghanistan. This is not a situation where an applicant seeks a security clearance so he or she can simply work with classified information and enjoy the comforts of home in the United States. Applicant has offered to risk his life to support the United States' goals in Afghanistan, and has shown his patriotism, loyalty, and fidelity to the United States. Applicant's continuing relationship with his one brother, a naturalized U.S. citizen residing in the United States, is relatively close. Applicant has met his burden of showing there is little likelihood that relationships with his other siblings and extended family members in Afghanistan could create a risk for foreign influence or exploitation. Furthermore, I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has "such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶¶ 8 (a) and 8(b) apply.

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. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[119]

There is some evidence against mitigating Applicant's conduct. Applicant's earlier personal conduct and alcohol consumption issues exposed him to various criminal charges, and he was convicted of disturbing the peace for using offensive words, forgery, DWI on four occasions, and harassment. Other criminal charges were either unsubstantiated or dismissed. His financial problems led to his inability to maintain his routine monthly account payments, and accounts became delinquent. Applicant filed for bankruptcy in 2006.

The mitigating evidence under the whole-person concept is more substantial than the disqualifying evidence. Applicant immigrated to the United States to escape the Soviet occupation of Afghanistan, and he entered into a loving and caring relationship with an American who eventually adopted Applicant. Applicant has resided in the United States for over 30 years, and he has been a naturalized citizen since October 1992. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did spend beyond his means. Instead, his financial problems were a direct result of his love and compassion for his dying adoptive father. Applicant previously had a good financial portfolio including investments, money in the stock market and with a broker, art, and antiques. His credit cards had zero balances. But he used whatever funds he had available to spend on his father. After a few years, he sold his assets and eventually simply ran out of money caring for his father and honoring his father's burial request. Applicant's bankruptcy cleaned out his delinquent accounts. It appears that the medical accounts listed in the SOR should have been covered under Applicant's membership in the Indigent Health Care Program, which provided essentially free health care services to eligible residents. Applicant has started rebuilding his credit by opening up some credit cards with small balances and making routine monthly payments. Applicant's newer accounts are current. Applicant has been abstinent for over 12 years, and there have been no valid incidents involving criminal conduct for 10 years. There are clear indications that Applicant's financial problems, alcohol issues, and associated personal conduct issues are under control. His actions under the circumstances do not cast doubt on his current reliability, trustworthiness, or good judgment.

[119] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Overall, the record evidence leaves me without substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his personal conduct, foreign influence, financial considerations, and alcohol consumption. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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 E:	FOR APPLICANT
Subparagraph 1.a. through 1.n.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a. through 2.c.:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraph 3.a. through 3.l.:	For Applicant
Subparagraph 3.n.:	For Applicant
Paragraph 4, Guideline G:	FOR APPLICANT
Subparagraph 4.a.:	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.

ROBERT ROBINSON GALES
Administrative Judge