

DATE: October 11, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28411

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's mother, a permanent U.S. resident, and a brother, whose status is "Humanitarian Parole Indefinite," are citizens of Afghanistan. His wife, a permanent U.S. resident, is a citizen of the Republic of Georgia. His other brother and sister are U.S. citizens. All of these relatives live in the U.S. Applicant's ex-wife and son, who is a U.S. citizen, live in Germany. Applicant has an aunt living in Afghanistan. The record evidence is sufficient to mitigate or extenuate his relatives' foreign citizenship. Clearance is granted.

**STATEMENT OF THE CASE**

On November 14, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 12, 2004, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Applicant received a complete copy of the file of relevant material (FORM), dated November 1, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On January 10, 2005, Applicant responded to the FORM. Department Counsel having no objection to Applicant's response, the submissions were admitted. On February 24, 2005, I was assigned the case.

**FINDINGS OF FACT**

Applicant is a 53-years-old linguist who has worked for a defense contractor since January 2002 and is seeking to obtain a security clearance. His duty performance is remarkable, outstanding, and contributes tremendously to mission accomplishment. Applicant has received certifications and letters of appreciation for his duty performance.

Applicant was born in Afghanistan and became a naturalized U.S. citizen in November 1995. In 1974, Applicant left Afghanistan and came to the U.S. on a student visa. He obtained his permanent residence status through an amnesty

program. Applicant's father, now deceased, was an Afghanistan diplomat. His mother, age 88, and brother are Afghani citizens living in the U.S. His mother, a U.S. permanent resident, left Afghanistan and came to the U.S. in 1982 or 1983. This brother's status is "Humanitarian Parole Indefinite." He came to the U.S. in 1978 or 1979. This brother would like to become a U.S. citizen.

Applicant has a brother who came to the U.S. in 1960 and is a U.S. citizen. This brother was a founder of an orphanage in Afghanistan, but is no longer the Chairman of the Board of the organization that operates the orphan centers in Afghanistan. His sister was born in Afghanistan, but is a naturalized U.S. citizen. His brother and sister are married to U.S. citizens.

In December 2000, Applicant married his wife who is a citizen of the Republic of Georgia. She lives with him in the U.S. In August 1991, his wife entered the U.S. She previously came to the U.S. in 1998 on a tourist visa. In April 2003, his wife, who had previously applied for political asylum, was granted permanent residency in the U.S. In April 2006, she is eligible for naturalized citizenship. Applicant has not met any of her relatives. His wife's father is a physicist living in Moscow and her mother is a mathematics professor living in the Republic of Georgia.

Applicant was previously married. In July 1991, he married a woman who, prior to the marriage lived in Germany with her son. After they married, the woman returned to Germany until immigration paperwork was completed in 1993 or 1994. After obtaining permanent residence, they came to live with Applicant in the U.S. They lived with him for a year before returning to Germany. In 1997, his wife came to the U.S. for three months. In 2000, she returned to the U.S. for the divorce proceedings. Applicant and his wife were divorced in November 2000. Applicant visited them in Germany in 1996 and 1998. His son is a U.S. citizen and his ex-wife is married to a U.S. citizen. In December 2003, it was decided for peace and stability of all involved that it was better if he no longer had contact with his son or his ex-wife.

Applicant has an uncle and aunt living in Afghanistan. He has not seen his uncle since 1974 when he left Afghanistan. In March 2003, he saw his aged aunt while he was in Afghanistan working as a translator for the U.S. Army. He had not seen her in almost 28 years and has not seen or had contact with her since the visit. Applicant owns no property in Afghanistan or anywhere outside the U.S.

### **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. I conclude the relevant guidelines to be applied here is Guideline B (Foreign Influence).

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968,

*Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

### CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Applicant's spouse, a permanent U.S. resident, is a citizen of the Republic of Georgia and his mother and brother are citizens of Afghanistan. His son lives in Germany. Disqualifying Condition (DC) 1 (E2.A2.1.2.1 *An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.*) applies.

Applicant wife, mother, brothers, and sister all live in the U.S. His wife and mother are permanent U.S. residents. In 2006, his wife becomes eligible for naturalized U.S. citizenship and plans to do so. Applicant's one brother and sister are U.S. citizens. His other brother's status is "Humanitarian Parole Indefinite." All of these relatives currently lived in the U.S. and have done so for a long time, and are U.S. citizens or permanent U.S. residents. I find itigating Condition (MC) 1 (E2.A2.1.3.1 *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.*) applies to his wife, mother, brothers, and sister. Allegations 1.a through 2.d are concluded for Applicant.

Applicant's ex-wife and son live in Germany. He has an aunt who lives in Afghanistan. In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B.<sup>(2)</sup> An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.

A relationship with an ex-wife is normally not a close relationship. That is shown by the 2003 decision that Applicant should no longer have contact with her or his son. His son is a U.S. citizen and his ex-wife is married to a U.S. citizen.

In 2003, Applicant was deployed to Afghanistan as a translator with the U.S. Army. It was at that time he saw his aunt and birthplace for the first time in almost 28 years. He had not seen or had contact with his aunt since the 2003 visit. Traveling to Afghanistan in support of U.S. military forces is not a disqualifying factor. MC3 (E2.A2.1.3.3 *Contact and*

*correspondence with foreign citizens are casual and infrequent*) applies to his contact with his ex-wife, son, and aunt.

In summary, the record evidence demonstrates Applicant has all the indicators of an industrious, mature, and trustworthy individual. After weighting the record evidence as a whole, it is my determination that the facts and circumstances show Applicant's relatives do not pose an unacceptable risk or concern of foreign influence.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section E 3.1.25 of Enclosure of the Directive are hereby rendered as follows:

Paragraph 1 Foreign Influence: FOR THE APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 98-0419 (April 30, 1999) at p.5.