



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



In the matter of:	)	
	)	
-----	)	
SSN: -----	)	ISCR Case No. 09-02220
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

June 11, 2010

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and transcript, Applicant's request for a security clearance is denied.

On August 26, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his defense contractor job as a translator. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a set of interrogatories<sup>1</sup> to clarify or augment information about potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's response to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding<sup>2</sup> that it is clearly

<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

consistent with the national interest to grant Applicant's request for access to classified information. On November 5, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)<sup>3</sup> for foreign influence (Guideline B) and financial considerations (Guideline F).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on February 5, 2010. Pursuant to a Notice of Hearing issued the same day, I convened a hearing in this matter on February 25, 2010. The parties appeared as scheduled.<sup>4</sup> The Government presented seven exhibits (Gx. 1 - 7). Gx. 1 and Gx. 3 - 7 were admitted without objection. Gx. 2 was admitted over objection of Applicant's counsel. (Tr. 20 - 21) Applicant testified on his own behalf, presented two witnesses, and proffered 14 exhibits (Ax. A - N), which were admitted without objection.<sup>5</sup>

Department Counsel also asked in a pre-hearing submission that I take administrative notice of informational documents pertaining to Afghanistan. Those documents are included in the record as Jx. I - VIII. (Tr. 23 - 25) With one exception, which I addressed at the hearing, my factual findings about those countries is based solely on information in those exhibits.

### **Findings of Fact**

Under Guideline B, the Government alleged that Applicant's father-in-law and mother-in-law (SOR 1.a) and sister-in-law (SOR 1.b) are citizens of Afghanistan residing in Pakistan; that he has two uncles who are citizens of and reside in Afghanistan (SOR 1.c); that Applicant traveled to Afghanistan between May and December 2006, and in June and July 2007 (SOR 1.d); and that he traveled to Pakistan each year between 2001 and 2006 (SOR 1.e). In response, Applicant admitted with explanation each of the Guideline B allegations.

Under Guideline F, the Government alleged that Applicant owes approximately \$325,016 for 28 delinquent debts (SOR 2.a - 2.bb). In response, Applicant admitted with explanation the allegations at SOR 2.b. At hearing, he also admitted the debt listed at SOR 2.p. He denied with explanation the remaining Guideline F allegations. His general position regarding the debts he has denied is that they are not his personally, but are the responsibility of a separate corporate entity through which he did business until 2005. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of relevant fact.

---

<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

<sup>4</sup> DOHA received the transcript of hearing (Tr.) on March 9, 2010.

<sup>5</sup> Ax. A - H were provided as part of Applicant's Answer to the SOR on November 25, 2009. At the hearing, each document was identified for the record and Department Counsel indicated the Government had no objection to the documents being included in the record. (Tr. 10 - 15)

Afghanistan<sup>6</sup> is an independent nation first ruled by indigenous monarchs beginning in 1919, when the British Empire relinquished control. However, in 1979, the Soviet Union invaded Afghanistan and occupied the country until 1989. Thereafter, a civil war took place which ended when the Taliban took control of the government and established a regime based on an extreme fundamentalist version of Islamic law. Human rights were virtually non-existent, especially for women, and dissent was countered through violent repression. The Taliban regime also created circumstances that allowed Osama bin Laden and al-Qaida safe haven and resources for international terrorist actions that culminated in the attacks on the U.S. on September 11, 2001.

The subsequent U.S. military actions against the Taliban allowed the establishment of an openly-elected government based on a western democratic model. However, the country remains unstable. Human rights abuses continue at the hands of the Taliban in areas they still control. The Afghan government continues to struggle in its efforts to overcome a legacy of corruption, and U.S.-led coalition forces have been unable to provide a secure environment either in the countryside or in Afghanistan's urban centers. U.S. personnel and anyone aligned with U.S. interests are at constant risk of attack, kidnapping, and other hostile acts by insurgents.

Applicant is 46 years old and is employed as a translator with the U.S. military in Afghanistan, his native country, in other parts of Southwest Asia, and in the Middle East. Applicant was born and raised in Afghanistan. However, he and most of his family left Afghanistan for Pakistan in 1985 to escape the Soviet invasion and occupation there. They stayed away because of the ensuing violence of the Afghan civil war and the rise of the Taliban regime in Afghanistan. Applicant obtained a two-year degree from a college in Pakistan in 1989 and emigrated to the United States in 1990. He became a naturalized United States citizen in 1998. (Gx. 1; Jx. I)

Applicant's parents, a brother, and two sisters are naturalized U.S. citizens living in the United States. His father graduated from a U.S. university in 1960, and was a judge in the Afghan appellate courts before he took his family to Pakistan in 1985. Applicant's father no longer can work due to heart problems that first arose in 1995. (Tr. 89 - 93) Applicant's father-in-law worked for the Afghan cultural ministry before retiring and moving with his wife, a retired school teacher, to the United States. (Tr. 96 - 98) Applicant's wife's parents live with Applicant in the United States. (Tr. 62)

Applicant also has two uncles still living in Afghanistan. One uncle retired from a career working in the Afghan court system. The other is a government worker, but it is not known exactly where in the Afghan government he worked. Applicant last saw or spoke with his uncles when he went to Afghanistan in 2007. Since then, he has had no contact with them. (Gx. 1; Gx. 2; Tr. 99 - 100)

---

<sup>6</sup> Despite the SOR 1.a and 1.b allegations that Applicant's in-laws live in Pakistan, no information was submitted about that country. The parties agreed at hearing that the only Foreign Preference concern was about Afghanistan. (Tr. 23 - 25)

Applicant and his wife have been married since August 1998. She was born and raised in Afghanistan, and she became a U.S. citizen in December 2004. They have three children, ages 9, 7, and 20 months, all of whom were born in the United States. At the time he submitted his request for a security clearance, Applicant's wife's parents and a sister were Afghan citizens living in Pakistan. However, her parents are now living in the United States as permanent resident aliens. Her sister is married to an American citizen and living in the United Kingdom. As with his uncles in Afghanistan, Applicant has never had much contact with his in-laws, even after they immigrated to the United States. (Gx. 1; Gx. 2; Tr. 59,61)

Applicant traveled to Afghanistan from May to December 2006 to try starting his own business. He wanted to take advantage of the improving economy in Afghanistan by importing salvaged cars from the United States to sell in Afghanistan. However, the venture failed and he returned to the U.S. Many Afghan families who did not emigrate to other countries remained in Pakistan after fleeing the Soviet occupation, and the instability and outright violence that subsequently has plagued Afghanistan for the past 30 years. In June 2007, he returned to Afghanistan to attend his sister's engagement ceremony. She lives in the U.S. with her husband, who is a native Afghani with permanent resident alien status. Applicant also traveled to Pakistan once each year between 2001 and 2006 for a wedding or engagement ceremony for either one of his own siblings or for a member of his wife's family. (Answer to SOR; Gx. 2; Tr. 100 - 101)

Applicant has no history of official ties to Afghanistan, Pakistan, or any other foreign government. He does not have any financial or other property interests outside the United States. He does not send money or any other form of support to family or associates overseas. (Tr. 61) His performance as a translator for the U.S. military has been exceptional. He was deployed to Afghanistan for seven months in 2009, when he worked successfully with headquarters staffs and in a forward deployed status. Before working overseas, Applicant worked as a "role player" helping train troops prior to their deployment to Southwest Asia. In every position he held as a translator or role player, Applicant has received strong praise and recognition for his work. (Ax. G; Ax. H; Ax. K; Ax. L)

In 1997, Applicant entered into a long-term lease of a gas station and convenience store which catered to long distance truckers (hereinafter "Truck Stop"). He leased the business from an oil distribution company. The term of the lease was 15 years. It afforded Applicant the opportunity to make a profit from the sale of the oil distributor's gasoline and related products. He also sold food and other convenience store products. Between 1997 and 2002, Applicant operated this and two other gas stations / convenience stores as a Subchapter S corporation.<sup>7</sup> By doing business this way, Applicant limited his personal liability and obtained a tax advantage through the

---

<sup>7</sup> According to the Internal Revenue Service, S corporations are corporations that elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes. Shareholders of S corporations report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates. This allows S corporations to avoid double taxation on the corporate income. S corporations are responsible for tax on certain built-in gains and passive income. (See <http://www.irs.gov/businesses/small/>)

way his income was reported. It was also possible for him to limit his debt liability to the amount he invested in the company. However, to do so, he would have had to properly structure his finances to comply with IRS requirements. Applicant did not present any information that showed he had done so.

To incorporate his business, he used the services of a person whose business it was to file the appropriate paperwork with the state. That person also served as the company's agent for purposes of representing the corporation to outside entities, such as corporate creditors and persons filing suit against the company. Applicant claimed he thought the agent was also responsible for handling his debts, but he failed to establish that this was, in fact, part of the agent's duties.

In February 2002, he drafted a *Management Agreement* for Applicant. (Ax. A) That document was essentially a sublease of Applicant's position to another company (Company A). Company A agreed to run the Truck Stop, to maintain inventories as required by the oil distributor, to make payments to Applicant's corporation of payments required of Applicant by the oil distributor, and to pay to Applicant's corporation \$5,000 each month to lease the business. Company A also agreed to make required payments to third parties such as tax authorities, insurance companies, and so on.

Applicant claimed that the 2002 *Management Agreement* was, in fact, a sale of his interest in the Truck Stop. However, because he himself had leased the business from an oil distribution company, he had no ownership interest to sell. Further, it is clear from a plain reading of the *Management Agreement* that Applicant intended to retain an interest in the business. Section 1.1 of the agreement states

The Corporation (Applicant) hereby obtains the services of Manager (other corporation) and Manager agrees to operate, manage, and run the Business (Truck Stop). This Agreement does not convey ownership of or any rights in or to the Business to Manager, greater than those specifically set forth herein.

In consideration of agreeing to manage Applicant's business, Company A had the opportunity to keep any proceeds remaining after paying rent to the Applicant and making other required payments specified in the agreement. The business was repossessed by the oil company in May 2005 because either Applicant or Company A had stopped making the necessary payments on the oil and gas inventories. Applicant received the rent payments only for about five months after he executed the *Management Agreement*.

When Applicant applied for his security clearance in 2008, he did not list any adverse information under the questions dealing with his finances. However, when a credit report was obtained as part of his background investigation, it revealed that he owed approximately \$167,000 in unpaid state taxes (SOR 2.a) for which a lien was filed against him in 2008. Applicant claimed that the unpaid taxes were related to the Truck Stop business and were due for periods after he "sold" the business. As such, he claimed that the unpaid taxes are Company A's responsibility. In support of his claim, he presented a letter dated February 2, 2002, from his corporate agent to the IRS stating

that the business was sold and that the other corporation would be liable for future tax revenues due to federal and state authorities. (Ax. E) Applicant has tried to no avail to negotiate this debt with the state tax authorities. He recently contacted a tax advisor regarding this debt and his accountant has addressed this matter unsuccessfully with the state. (Ax. Ax. D; Ax. M; Ax. N)

The credit reports obtained during his background investigation also revealed 27 other debts attributable to Applicant and totaling approximately \$158,016 (SOR 2.b - 2.bb). Of those debts, Applicant claimed that only two debts totaling \$520 (SOR 2.b and 2.p) were his personal obligations, which arose and became delinquent while he was overseas working as a translator in 2008 and 2009. (Gx. 3; Gx. 6) Additionally, the debts at SOR 2.e and 2.f are duplicates of the debt at SOR 2.d (LFG for \$9,772).

The debt at SOR 2.d and the remaining debts alleged in the SOR total approximately \$138,472. Applicant identified them as corporate accounts he opened to pay expenses of his business. He claimed that those debts should have been paid by the other corporation after 2002. However, each of the credit reports in evidence lists those debts as either individual accounts or joint accounts. Additionally, several of the accounts were opened after he executed the Management Agreement. (Gx. 3 - 7) In response to the SOR, Applicant also claimed that he had disputed several of the debts listed in the SOR, but the only documentation of any dispute is a notation in a credit report he provided (Ax. B) next to a credit card account with a zero balance. Applicant has made no payments on any of the debts listed in the SOR.

Applicant enjoys a solid reputation in his community and at work. Current and former associates praise his professionalism and his integrity. The pastor at a local church, who knows Applicant through both the church and through a business the pastor runs, characterized Applicant as a "special person" who is generous with his time and money for those in need. (Tr. 35 - 36; Ax. F; Ax. J)

### **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>8</sup> for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>9</sup> and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

---

<sup>8</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>9</sup> Directive. 6.3.

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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 6 (Foreign Influence - Guideline B) and AG ¶ 18 (Financial Considerations - Guideline F).

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>10</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>11</sup>

## Analysis

### Foreign Influence.

The Government presented sufficient information to support the factual allegations in SOR ¶ 1. Those allegations, all of which Applicant admitted, raise security concerns about Applicant's personal relationships and other interests in Afghanistan. Specifically, as stated 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

---

<sup>10</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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.

At the outset, the Government's information about Applicant's travel, alleged in SOR 1.d and 1.e, is not disqualifying in and of itself. However, Applicant traveled to Afghanistan in 2006 to pursue business opportunities that did not work out. His repeated travel to Pakistan to attend family engagement and wedding events is evidence of close ties to family members who are citizens of and reside in a foreign country. The Government also presented information that supported the allegations (SOR 1.a - 1.c) that Applicant's wife's parents and sister are citizens of Afghanistan residing (at the time the SOR was issued) in Pakistan. However, available information also showed that Applicant's mother- and father-in-law, both retired, now live with Applicant in the United States as permanent resident aliens. Further, his sister-in-law lives in England with her husband, a U.S. citizen. These facts require application of the disqualifying conditions at 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*). However, the security concerns about Applicant's in-laws, when evaluated in the context of his long-term personal and professional ties in the U.S., are resolved by application of the mitigating conditions at AG ¶¶ 8(a) (*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.*) and 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*)

The Government also supported its allegation (SOR 1.c) that Applicant has two uncles who are citizen residents in Afghanistan. The disqualifying condition at AG 7(a) applies here; however, Applicant's relationship with his uncles is distant at best. He has little or no contact with them, and he is unlikely to contact them in the future. Thus, in addition to the mitigating conditions at AG ¶¶ 8(a) and 8(b), the security concerns about his uncles are resolved by application of the mitigating condition at AG ¶ 8(c) (*contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*). On balance, available information about Applicant's ties to foreign citizens is sufficient to mitigate the security concerns about possible foreign influence.



## Financial Considerations

The security concern about Applicant's finances, as stated in AG ¶ 18, is that:

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 Government presented sufficient information to support the allegations in SOR ¶¶ 2.a - 1.bb. Applicant owes \$325,016 for 28 delinquent debts. Available information showed that those debts were past due since at least 2005 and that none of them have been resolved or acted on in any meaningful way. Accordingly, the record requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response to the SOR and at hearing, Applicant claimed that all but two of the debts should not be attributed to him because they are related to his business. Further, he claimed that his status as a subchapter S corporation protected him from liability for the debts alleged. However, he did not present sufficient information to support his claim. Additionally, a review of the credit reports in evidence (Gx. 3 - 7; Ax. B) shows the debts alleged are individual or joint accounts, not corporate accounts, and that many of them were opened after Applicant claimed he had sold his business. As to the sale of his business, available information shows that he did not and could not sell the business. Instead, he subleased the business and tried to retain a level of income from it. The fact that the business ultimately failed did not relieve him of his responsibilities as the primary lessor from the oil distribution company.

Applicant also claimed that he was disputing several of the debts alleged. Aside from information related to the tax debt alleged in SOR 2.a, he has not presented sufficient documentation of any disputes with his creditors. As to SOR 2.a, Applicant and his accountant have been trying to resolve this matter based on Applicant's claim that the taxes owed were the responsibility of Company A. Indeed, the *Management Agreement* contemplated that Company A's payments to third parties may include taxes due from the business. However, Applicant did not establish the nature of the taxes owed or provide any support for his claims that Company A should have paid them.

Applicant has not established that he has paid or otherwise resolved any of his debts. Aside from preliminary consultations with tax advisors and bankruptcy attorneys, he has not entered into any financial counseling or employed other professional means to resolve his debts and improve his financial condition. Applicant did not present any information that would show his finances will not continue to be a security concern in the future. In light of the foregoing, none of the mitigating conditions listed at AG ¶ 20 apply. On balance, he has failed to carry his burden of persuasion to mitigate, refute, or extenuate the security concerns raised by his financial problems.

## Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines B and F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Available information shows that Applicant, 40 years old, is a mature, responsible, hard-working father and husband. He has a record of excellent work in support of the military's operations overseas, and he enjoys a solid professional and personal reputation. While the security concerns about possible foreign preference have been satisfactorily addressed, the favorable personal and professional information in his background does not outweigh the unresolved adverse information about his finances. A commonsense assessment<sup>12</sup> of all available information bearing on Applicant's past and current circumstances shows he has not addressed satisfactorily the doubts about his suitability for access to classified information raised by the significant unpaid debt he owes. Because protection of the national interest is paramount in these determinations, such doubts must be resolved for the Government.<sup>13</sup>

## Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a - 1.e:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a - 2.bb:	Against Applicant

## Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is denied.

---

MATTHEW E. MALONE  
Administrative Judge

---

<sup>12</sup> See footnote 9, *supra*.

<sup>13</sup> See footnote 11, *supra*.