



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-02787  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

October 26, 2010

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

MOGUL, Martin H., Administrative Judge:

On November 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On December 15, 2009, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on March 9, 2010. DOHA issued a notice of hearing on April 2, 2010, and I convened the hearing as scheduled on May 5, 2010. The Government offered Exhibits 1 through 13, which were received without objection. Applicant testified on his own behalf and submitted no exhibits at the time of hearing. DOHA received the transcript of the hearing (Tr) on May 11, 2010. I granted Applicant's request to keep the record open until May 19, 2010, to submit additional documents, and several additional documents

were received, identified and entered into evidence collectively as Exhibit A. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts relating to the country of Afghanistan. The request and the attached documents were admitted into evidence as Exhibit 13. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his RSOR, Applicant admitted all of the SOR allegations 1.a. through 1.c., and 2.a. through 2.e. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 55 years old. He is married and has two children. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Guideline F, Financial Considerations**

The SOR lists three allegations (1.a. through 1.c.) regarding financial difficulties under Adjudicative Guideline F. As stated above, Applicant admitted all of the allegations in his RSOR. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$47,504 for a judgement that was filed against Applicant in 2008. Applicant testified that this debt was as a result of a judgement issued against him, and in favor of an individual with whom he was a joint tenant. He had the lease on the property to run an auto dealership, and this other individual used part of the property for his own business. Applicant averred that he never received notice of the trial so he did not have an opportunity to defend himself in court, and a default judgement was entered against him. He testified that he has been unable to locate this person, and even the court and his opponent's previous attorney do not know his location, so he is unable to resolve this debt, although he would attempt to resolve it if he could locate the creditor. He testified that there has been no attempt to collect this debt. (Tr at 26-27, 56-59.)

1.b. This overdue debt is cited in the SOR in the amount of \$2,206. Applicant testified that this debt has been resolved. (Tr at 27-31.) Exhibit 12, the most current credit report, dated May 4, 2010, establishes that this account was "Paid for less than

full balance.” Exhibit A includes a letter from this creditor, confirming this debt has been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$943. Applicant testified that this debt has been resolved. (Tr at 29-31.) Exhibit 12 establishes that this account was closed at Applicant’s request with a “zero balance.” Exhibit A includes a letter from this creditor, confirming this debt has been resolved.

Applicant testified that he is current with all of his recent debts, which Exhibit 12 seemed to verify. (Tr at 71.) He also currently owns a small used car dealership as a source of income.

### **Guideline B, Foreign Influence**

The SOR lists five allegations, regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. As stated above, Applicant has admitted all of the allegations listed in his RSOR:

2.a. It is alleged in the SOR that after becoming a U.S. citizen on December 7, 2000, Applicant applied for and held an Afghan passport. Applicant testified that he applied for this passport that could only be used for one year, because on a trip he was making to Afghanistan, his plane was traveling through Iran, and he would not be able to enter Iran if he did not have an Afghan passport. This was the only time that he used this Afghan passport. The passport has since expired, and Applicant turned it over to his Facility Security Officer to maintain possession of it. (Tr at 31-38.) Exhibit A includes a letter from the Assistant Facility Security Officer of his employer, confirming he is holding the expired Afghan passport of Applicant in a security container.

2.b. It is alleged in the SOR that Applicant has a cousin, who is a citizen and resident of Iran. Applicant testified that his cousin is only a resident, not a citizen, of Iran, and that he fled to Iran to escape the Taliban in Afghanistan. His cousin is a civil engineer and has never been employed by the Iranian Government. He talks to his cousin by phone approximately once a year. Applicant stated that his loyalty is far greater to the United States than to his cousin. (Tr at 38-42.)

2.c. It is alleged in the SOR that Applicant’s family owns two pieces of property in Afghanistan with an approximate total valued of \$50,000. Applicant testified that the amount of \$50,000 was just an estimate he gave when he was questioned, and he does not believe the two pieces of property, which consist of a home and a piece of empty property, are worth as much as his estimate. At the hearing he estimated the value of one property at \$3,500, and he did not think the other property was worth anything. He gave no explanation for this very different evaluation of the property, other than he had thought about it more. His father, who died two weeks before the hearing, owned the properties, and Applicant did not know what his father had intended to do with them. (Tr at 42-45.) He estimated that his net worth in the United States was between \$180,000 to \$200,000. (Tr at 45.)

2.d. Applicant has traveled to Afghanistan in 2003, 2004, 2005, and 2008. All of his trips were at the request of his father to reclaim the property, that is the subject of 2.c., above. (Tr at 66-68.)

2.e. Applicant has traveled to Iran in 2003, 2004, and 2005. These trips were necessary as a means to enter Afghanistan. (Tr at 111.)

Applicant was born in Afghanistan in 1955, moved to Pakistan in 1980, and then emigrated to the United States in 1981, where he has lived since then. He became a U.S. citizen in 2000. His wife is from Afghanistan, and she is also a United States citizen. His two children are both United States born citizens. Applicant has six brothers who are all U.S. citizens. He also has three sisters, two of whom are U.S. citizens, and the third is a Canadian citizen.

### **Mitigation**

Applicant submitted five positive character letters in Exhibit A. He was described as, "a man of high moral standing and strong character." He was also described as being honest, reliable, loyal, and trustworthy.

### **Current Status of Afghanistan**

I take administrative notice of the following facts regarding Afghanistan: Afghanistan has been an independent nation since the British relinquished control in 1919. In 1979, Soviet Union forces invaded and occupied Afghanistan. The Soviet forces withdrew by 1989. In the mid 1990s, the Taliban rose to power largely due to the anarchy that arose after the Soviet Union withdrawal. After the September 11, 2001, attacks, U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power. A new democratic Government took power in 2004.

Despite the new Government, Afghanistan's human rights record has remained poor. In spite of progress made since the Taliban was deposed, Afghanistan still faces daunting challenges, including defeating terrorists and insurgents, dealing with years of severe drought, recovering from over two decades of civil strife, and rebuilding a shattered physical, economic, and political infrastructure. Overall, the United States Department of State has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

### **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **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 and could potentially apply in this case. 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. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: I find that AG ¶ 20(d) is applicable since Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." The evidence indicates that Applicant has resolved two of the overdue debts listed on the SOR. The third overdue debt is certainly the largest amount owed, but I find the debt to be questionable, since it is based on a default judgement, where Applicant never received notice of the trial upon which this judgement is based. However, Applicant testified that he has attempted to locate this creditor, including contacting the court and the creditor's previous attorney, but he has not been successful. I find that Applicant has made a good-faith attempt to resolve this debt. Therefore, I find that this mitigating condition is a factor for consideration in this case.

Finally, Applicant is current on all of his recent debts. I conclude that Applicant has mitigated the financial concerns of the Government.

## **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding Foreign Influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Those that could be applicable in this case include the following: 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.” Applicant’s cousin, who is a resident of Iran, makes AG ¶ 7(a) a concern to the Government. I find that AG ¶ 7(b) “connections to a foreign person, group government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information . . . and the individual’s desire to help a foreign person, group, or country by providing that information” is also applicable in this case. Finally, AG ¶ 7(e) “a substantial business, financial or property interest in a foreign country . . . which could subject the individual to heightened risk of foreign influence or exploitation” is potentially applicable in this case because of the two pieces of property owned by his family in Afghanistan.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 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,” is applicable to this Applicant and controlling for the following reasons:

Applicant is a U.S. citizen, who has lived in the U.S. since 1981 and been a United States citizen since 2000. Applicant’s wife is also a U.S. citizen. The two children of Applicant and his wife are solely U.S. born citizens and residents. All of Applicant’s brothers and two of his sisters are United States citizens and residents, and the other sister is a citizen and resident of Canada. He has minimal contact with his one cousin, who resides in Iran.

I also find under AG ¶ 8(f) that the value of the “foreign property interests is such that they are unlikely to result in a conflict and could not be used to effectively influence, manipulate or pressure the individual,” because, with the exception of the property owned by his family in Afghanistan, the value and ownership of which are not clear, all of Applicant’s far greater assets are in the United States.

Finally, Applicant had five individuals submit positive character letters on his behalf as to his honesty and trustworthiness. I therefore conclude Guideline B for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the Mitigating Conditions apply, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.c.: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraphs 2.a through 2.e.: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge