

Applicant answered the SOR in writing on June 7, 2010, and requested a hearing before an administrative judge. DOHA assigned the case to an administrative judge on July 29, 2010; re-assigned it to another administrative judge on August 23, 2010; and re-assigned it to me on September 14, 2010, pursuant to Applicant's request for an expedited hearing. DOHA issued a Notice of Hearing on September 14, 2010, scheduling the hearing for September 22, 2010. I convened the hearing on said date. At the commencement of the hearing, Applicant waived his right to have 15 days notice before the hearing. (Tr. 7.) Department Counsel offered Government Exhibits (GE) 1 through 12, which were admitted into evidence without objection. Applicant testified, called one witness, and offered Applicant Exhibit (AE) A into evidence that was admitted without objection. The record remained open until October 15, 2010, to give Applicant an opportunity to submit additional information. DOHA received the hearing transcript (Tr.) on September 30, 2010. Applicant timely submitted three exhibits that I marked as AE B through D and admitted into the record without objection.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Afghanistan. The request and the attached documents are included in the record as Hearing Exhibit (HE) 1 and contained source documents marked I through VIII. Applicant had no objection to the admission of said documents and they were admitted into the record. (Tr. 20.) The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant's SOR response admitted all factual allegations set forth in SOR and provided explanations. His admissions are accepted as factual findings.

Applicant is 55 years old. He was born in Afghanistan and went to high school there. He attended an American university, located in Afghanistan, and graduated with a bachelor's degree in agriculture. He speaks two Afghan dialects and learned English in college. (Tr. 23.) In 1978, he was conscripted into the Afghan army for one year. In 1979, the Russian government invaded Afghanistan and toppled its government. In 1983, he was imprisoned for three months because of his previous affiliation with the American university. (Tr. 54.) His father and two brothers were also imprisoned. His father was later killed. After his imprisonment, Applicant left Afghanistan as a refugee and went to India. In January 1986, he entered the United States and joined his oldest brother, who previously escaped Afghanistan and settled in the United States. (Tr. 55.) In 1992, he became a naturalized citizen. In 1997, he married his wife, who was born in Afghanistan and is a naturalized U.S. citizen. He has one stepchild, age 26, who was born in Afghanistan and is a naturalized U.S. citizen. (GE 1.)

After arriving in the United States in 1986, Applicant worked various jobs. In 1994, he joined an insurance company as a sales representative and later became a licensed insurance agent. He worked in that industry until late 2004 when he obtained a position with a federal contractor to work as an interpreter with the U.S. Coalition Forces (Forces).

In January 2005, Applicant deployed to Afghanistan for the first time since leaving it in 1986. (Tr. 24.) While there, he primarily worked on a Forces' base. On October 9, 2006, Applicant and a co-worker left the base to return a car that Applicant had rented for another colleague who returned to the United States a day or so earlier. Upon returning to the base, their supervisor immediately terminated both of them because they did not receive authorization for the trip. Applicant explained that he had heard the week before that no one was allowed to leave the base without permission because of a security threat, but he did not take it seriously, as he had driven to the nearby city numerous times. (Tr. 27; GE 3 at 3.) He acknowledged that he made a mistake in leaving the base without permission. (Tr. 44; GE 3 at 6.)

Upon his return to the United States, Applicant continued working for his employer. He was assigned to an Army base, where he taught soldiers, who were deploying to Afghanistan, the Afghan language and customs. (Tr. 28.) After completing that assignment in May 2007, he resumed work in the insurance industry until December 2007 when he obtained a civilian position with a different defense contractor that did not require a security clearance for deployment to Afghanistan. (Tr. 29-32.) He again deployed to Afghanistan for a six-month assignment as a civilian employee and returned to the United States in May 2008. In December 2008, he traveled to Afghanistan to visit his family and attend a wedding. He returned home in January 2009 and started a business selling cars. In October 2009, he began working for an insurance company, where he has been working since. (Tr. 32; GE 3 at 7.) He would like to return to Afghanistan as an interpreter for the Armed Forces, if he obtains a security clearance.

Applicant's mother, father, and step-mother were born in Afghanistan. They are deceased. He has four sisters and six brothers. All were born in Afghanistan. Two sisters are citizens and residents of Afghanistan. One of them is a teacher and the other is a housewife. Their husbands are businessmen. He visited them once or twice a month while in Afghanistan with his employer's permission. (Tr. 39-40; GE 2 at 5.) Applicant continues to speak to them once or twice a month. One sister is a Canadian citizen and resident. One sister is a U.S. citizen and resident. One of his sisters is deceased. (Tr. 38; GE 1.)

Applicant has six brothers. Two brothers are residents of Afghanistan. One of those brothers is a citizen of Holland, but resides in Afghanistan with his new Afghani wife. (Tr. 37.) He was trained as a veterinarian, but is not working. Applicant frequently visited him while he was working in Afghanistan, along with other family members. Applicant speaks to him every month or two. (Tr. 63.) He has sent this brother \$200 every couple months for the past two years to help support his family. (Tr. 43.) His other

brother, a successful businessman, is a citizen of Afghanistan. Applicant speaks to him once a year. (Tr. 64.) The four other brothers are naturalized U.S. citizens and reside in the United States. One of those brothers is a linguist for the U.S. Army. (GE 3 at 5.) One sister and one brother, residing in Afghanistan, are aware of Applicant's position as an interpreter. (Tr. 41.) None of his other family members residing in Afghanistan has any affiliation with the Afghan government.

For the past two or three years, Applicant has sent \$600 to one of his cousins in Afghanistan to help care for family members. (Tr. 40.) He visited him once or twice a month while working there.

Applicant and his ten siblings inherited an interest in the family home in Afghanistan. His veterinarian brother currently resides in it. Applicant estimates the value to be about \$120,000. (Tr. 42.) He does not have any other financial interests in the country and has no interest in obtaining his \$10,000 share of the inheritance. (Tr. 67.) None of his four brothers or one sister living in the United States has any interest in his parents' house either. (Tr. 67.) Applicant owns a home in the United States and has U. S. bank accounts. He estimates his net worth at approximately \$400,000. (Tr. 42-43.)

Applicant has a primary and a secondary mortgage on his home, both of which are held by the same lender. In January 2009, Applicant began falling behind on his payments because of a lack of income due to the termination of his employment in October 2006 and subsequent periods of unemployment and underemployment. (Tr. 45, 57.) In March 2010, he finalized a loan modification agreement for the primary mortgage, which reduced his monthly payments to \$1,265. As of August 2010, his primary mortgage is current. (AE B.) His second mortgage has an outstanding balance of \$59,000. The lender requested approximately \$6,000 to make it current. However, Applicant cannot pay that amount on his \$45,000 annual salary. He explained his financial situation to his lender, who placed a lien on the property to secure its interest. His wife recently lost her employment due to the poor economy and is seeking a new position. (Tr. 47.)

Applicant credibly and sincerely asserted his pride of U.S. citizenship. He decided to become an interpreter because he wanted to support the U.S. Army and knew that it needed linguists familiar with the Afghan dialects that he speaks, in addition to the position's high salary. (Tr. 51-52.) He earned a Certificate of Participation for his support of combat operations during Operation Enduring Freedom from December 5, 2005, to June 3, 2006. (AE C.) Applicant called a witness, who worked with him as an interpreter in the same base facility. He was impressed with Applicant's ability to accurately interpret for the command and considers Applicant to be an honest person. (Tr. 101-102.)

Applicant submitted a letter of recommendation from his current employer, an insurance company. (AE A.) There is no derogatory information in the record concerning his police or financial records. He has never been arrested. He has never used illegal drugs, or been involved in an alcohol-related incident. (GE 1) In his closing

argument, Applicant stated that “if you send me over there to support the U.S. Army, I’m ready, even if I’m 55 years old and even [if] I’m going to the mountain; I’m going all over the hardest places. I put my life in jeopardy.” (Tr. 118.)

Afghanistan

I take administrative notice of the facts set forth in the Afghanistan Hearing Exhibits. Afghanistan is a country in southwestern Asia. Pakistan borders it on the east and the south. Iran borders it on the west and Russia in the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. It has about 18 million people. Afghanistan is presently an Islamic Republic that has had a turbulent political history, including an invasion by the Russians in 1979. After an Accord was reached in 1989 and Russia withdrew from the country, fighting continued among the various ethnic, clan and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic Government took power in 2004 after a popular election. Despite that election, terrorists and the Taliban continue to assert power and intimidation within the country. The country’s human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence. (HE 1.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by an applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 an 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 adverse to an applicant 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 *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concerns relating to the guideline for foreign influence are 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 county 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 two conditions that could raise a security concern and may be disqualifying:

(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;¹ and

(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 or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Since leaving Afghanistan, Applicant has maintained telephone contact with two brothers and two sisters, who are residents and citizens there. After he started working in Afghanistan in January 2005, he visited one brother and two sisters once or twice a month with his supervisors' permission. He continues to speak to them every month or so. He annually sends small amounts of money to his brother and one cousin. He speaks to his brother, the businessman, once a year. None of Applicant's family members have positions in which they could otherwise benefit from his access to sensitive information or technology. However, under either disqualifying condition, Applicant's connections to his family residing there could create a potential conflict of interest between his security obligations and desire to help them, in a situation wherein they were taken hostage or otherwise threatened with harm if he did not cooperate with terrorists' demands.

The Government produced substantial evidence of these disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 8 provides four potential conditions that could mitigate security concerns:

(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.;

(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;

¹ 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. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The current positions and activities of Applicant's four family members and one cousin in Afghanistan do not involve the government or military and they would have no interest in acquiring protected information. Only their physical presence creates the potential that their safety could be threatened to the point that Applicant would confront a choice between their interest and those of the United States. Hence, AG ¶ 8(a) has some application.

Applicant produced significant evidence establishing AG ¶ 8(b). Based on his relationship and depth of loyalty to the U.S., he can be expected to resolve any conflict of interest in favor of the United States. He has lived in the United States since 1986 and did not return to Afghanistan until his employment with the U. S. Coalition Forces in January 2005. His wife and stepchild are naturalized U.S. citizens, residing here. Four brothers and one sister are citizens and residents of the United States. He owns property and holds bank accounts in the United States. He worked for a U.S. company before starting his position with a federal contractor in January 2005 and recently resumed a position with another insurance company. He expressed his deep loyalty to the United States and willingness to sacrifice his life for it.

Applicant maintains ongoing communication with his two sisters and one brother living in Afghanistan and periodically speaks to his other brother. He also sends money to one brother and one cousin on an annual basis. Hence, AG ¶ 8(c) cannot apply, as those contacts are sufficiently frequent and not casual.

Applicant has a \$10,000 interest in a piece of property in Afghanistan that he inherited from his parents, but has not been disposed of to-date. He has offered his share to his brother who lives in the house. That amount of money represents a small percentage of his \$400,000 in U.S. assets and is unlikely to result in a conflict for him. The evidence is sufficient to warrant the application of AG ¶ 8(f).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

Applicant admitted that in October 2006, he violated his employer's security regulation while in Afghanistan when he left the base and traveled to a local city without the command's permission. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 17 provides one condition that could mitigate said security concern:

(c) 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.

Applicant was in Afghanistan from January 2005 to October 2006. After he violated the company's security regulation in October 2006, he was immediately terminated and sent home, signifying the gravity of the misconduct. Although this singular incident occurred four years ago, it was a deliberate infraction of his employer's policy. Applicant admitted that he left the base without permission because he did not take the security warning seriously based on his experiences while working there. That decision raises a question about his judgment and ability to comply with rules and regulations in the future. Hence, AG ¶ 17 (c) does not apply.

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes a condition that could raise a security concern and may be disqualifying:

(a) inability or unwillingness to satisfy debts.

Applicant admitted that he has been unable to make payments on his second mortgage since January 2009 because he does not earn enough money to cover all of his expenses. The evidence is sufficient to raise said disqualifying condition.

AG ¶ 20 provides three conditions that could mitigate security concerns under this guideline:

(b) 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;

(c) 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20 (b) has limited application. Applicant lost his employment in October 2006 as a result of circumstances within his control. Subsequently, he was periodically unemployed and underemployed. By January 2009, Applicant was no longer able to pay the primary and second mortgages on his home. In March 2010, he responsibly renegotiated the monthly payments on his primary mortgage and informed the bank of his financial situation and inability to make a \$6,000 payment on the second loan to make it current. The bank then filed a lien on the property to secure the second mortgage. To-date, the second mortgage is unresolved.

AG ¶ 20(c) does not apply because Applicant did not submit evidence that he has participated in credit counseling. Other than notifying the bank of his financial situation and working out a refinance agreement on his primary loan, he did not provide any documentation of the steps he has taken to resolve the second mortgage or reach an understanding with the lender that the situation is under control.

AG ¶ 20(d) cannot apply. There is no evidence that Applicant has made a good-faith attempt to pay or reach a resolution regarding the delinquent second mortgage that is alleged in the SOR.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant 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.

According to 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. Three circumstances weigh against Applicant in the whole-person analysis pertinent to the Foreign Influence guideline.

First, there is a significant risk of terrorism and human rights abuses in Afghanistan. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's four siblings to obtain such information. Second, he had numerous connections to Afghanistan before he immigrated to the United States in 1986. Following his birth, he spent his formative years there and received his education from a university there. Third, three siblings and a cousin, with whom he maintains frequent contact, are resident citizens of Afghanistan. His brother is a citizen of Holland, residing there. When he returned to Afghanistan with the U.S. Forces he made monthly visits to see his family.

Some mitigating evidence weighs in Applicant's favor under Guideline B. He is a mature person, who has lived in the United States for 24 years, and has been a naturalized citizen for 13 years. His spouse and stepchild are naturalized U.S. citizens and residents. He has strong ties to the United States, as four brothers and one sister are U. S. citizens and residents. Out of his sense of patriotism for the United States in its endeavors in Afghanistan, he worked for the U.S. government as a linguist in a dangerous environment for about 22 months. He credibly asserted his allegiance to the United States and willingness to sacrifice his life.

The SOR alleged one delinquent debt under Guideline F, a past due balance of \$59,000 on Applicant's second mortgage. To-date, he is unable to pay the \$6,000 that

the bank requires to bring the second mortgage into a current status. The bank is aware of his financial situation and secured that debt with a lien on the property. Applicant refinanced and resolved his primary mortgage deficiency as of March 2010, but has not documented that he reached an agreement with the bank regarding the unpaid delinquency on the second mortgage, despite having knowledge of the Government's security concerns since May 2010 when the SOR issued.

The security concern raised under Guideline E is troubling. Although Applicant worked in Afghanistan for 22 months, he was terminated from his employment as a consequence of making a serious error in judgment involving potential security threats to him and his command. Since then, he has worked with soldiers in an educational environment at a base in the United States for several months, and later returned to Afghanistan in a civilian capacity. He expressed remorse over his misconduct and a desire to resume his work with the U.S. Army. While said facts are evidence of some rehabilitation, the gravity of the error is indisputable and cannot easily be mitigated by that evidence or the passage of four years. Compliance with rules and regulations pertinent to the safety of the troops in the combat environment is paramount and a deliberate decision to ignore them is not acceptable.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant mitigated the security concerns pertaining to foreign influence, but not those raised under personal conduct and financial considerations. Overall, the record evidence leaves sufficient doubt as to Applicant's eligibility and suitability for a security clearance at this time.

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 B:	FOR APPLICANT
Subparagraphs 1.a through 1.f:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge