



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



In the matter of:

-----  
SSN: -----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 09-04074

**Appearances**

For Government: Melvin Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

May 27, 2010

**Decision**

---

WESLEY, Roger C., Administrative Judge:

**History of Case**

On August 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 revised Adjudicative Guidelines (AGs), effective within the Department of Defense on September 1, 2006.

Applicant responded to the SOR on September 3, 2009, and requested a hearing. The case was assigned to me on November 10, 2009, and was scheduled for hearing on February 25, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of six exhibits; Applicant relied on one witness (himself) and two exhibits. The transcript (Tr.) was received on March 9, 2010. Based upon a

review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Besides its six exhibits, the Government requested administrative notice of eight documents: *Background Note: Afghanistan*, U.S. Department of State (November 2008); *Country Reports on Human Rights Practices-2008: Afghanistan*, U.S. Department of State (February 2009); *Country Specific Information: Afghanistan*, U.S. Department of State (March 2009); *Annual Threat Assessment of Intelligence Community*, Director of National Intelligence (February 2009); *Country Reports on Terrorism 2008, Chapter 5-Terrorist Safe Havens*, U.S. Department of State (April 2009); *Country Reports on Terrorism 2008, Chapter 2-Country Reports South and Central Asia Overview*, U.S. Department of State (April 2009); *Travel Warning: Afghanistan*, U.S. Department of State (September 2008); *Threats to American Citizens in Kabul City*, U.S. Department of State (April 2009).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Afghanistan. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Afghanistan's current status.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with an updated financial statement and any contact with creditor 2.a or its identified collection agent or assignee. For good cause shown, Applicant was granted seven days to supplement the record. Within the time permitted, Applicant provided copies of his monthly payments to the collection service for creditor 2.a, a qualified offer of settlement from the same creditor, and a copy of a \$3,584 check settling his creditor 2.a debt in full. Applicant's submissions are not objected to by Department Counsel and are admitted as exhibits C through E.

### **Summary of Pleadings**

Under Guideline B, Applicant is alleged in the SOR to have: (a) parents who are citizens and residents of Afghanistan; (b) three brothers who are citizens and residents of Afghanistan; (c) a sister who is a citizen of Afghanistan and a resident of the United States (U.S.); (d) a brother who is a citizen of Afghanistan and a resident of Canada; (e) a brother-in-law who is a citizen of Afghanistan and a resident of the U.S.; and (f) a sister-in-law who is a citizen and resident of Afghanistan.

Under Guideline F, Applicant is alleged to have a delinquent indebtedness with a creditor listed in ¶ 2.a. (\$18,194). This is the only alleged debt under this guideline.

In his response to the SOR, Applicant admitted all of the allegations. He added explanations to his admission of the allegations set forth in ¶ 2.a. He claimed he was not able to satisfy this debt, but is making monthly payments “to take care of my debt.” See Applicant’s answer.

### **Findings of Fact**

Applicant is a 28-year old linguist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant was born and raised in Afghanistan. He immigrated to Germany in 1996 as a political refugee. Tr. 55-56. While in Germany he met his wife (a U.S. citizen) and married her in January 2002. See Ex. 1; Tr. 40-41. Applicant immigrated to the United States (U.S.) from Germany in 2002. See Ex. 2; Tr. 40. He entered the U.S. on a marriage visa and is fluent in the German language, as well as his native Afghan language. Tr. 40. Applicant has one child who resides with his wife and himself. Tr. 41. Applicant became a naturalized citizen in January 2009. See Ex. 1. He has two years of college in the U.S. See Ex. 1; Tr. 48.

Applicant’s parents are citizens and residents of Afghanistan. See ex. 2; Tr. 32-33. His father is a retired teacher and has never been affiliated with any foreign government. Applicant’s mother is a housewife and has never been affiliated with any foreign government. See Exs. 1 and 2; Tr.

Applicant has six brothers. Ex. 2; Tr. 33-34. Three of them are citizens and residents of Afghanistan. Two of them are students and have never been employed. None of his three brothers have ever had any affiliations with a foreign government. The third brother is a self-employed taxicab driver. Ex. 2. One of his brothers is married to a citizen and resident of Afghanistan. She is a housewife who has never been employed by a foreign government. Ex. 2.

Besides his three brothers who reside in Afghanistan, Applicant has three other brothers who are Afghan citizens, but reside elsewhere. Two brothers reside in Great Britain: One is a driver for a Chinese restaurant, and the other is a student. See Ex. 2; Tr. 34-39, 61. Another brother resides in Canada and is a packer for an unknown delivery packing company. See Ex. 2; Tr. 34.

Applicant also has a sister who is a citizen of Afghanistan. She currently resides in the U.S., where she has a green card and permanent resident status. See Exs. 1 and 2; Tr. 37-38. She is a housewife and has not had any affiliations with a foreign

government. See Ex. 2; Tr. 37. Her husband is also a citizen of Afghanistan, residing in the U.S. He is currently an unemployed student who previously was a business-owner. He has never been affiliated with a foreign government. Ex. 2; Tr. 39.

Beginning in July 2009, Applicant has been assigned by his employer to Afghanistan to work as a linguist for the U.S. Army (Army). Tr. 53-54. As a linguist, he provides translations for an Army civil affairs unit. Tr.45-47. He also participates in meetings with local tribal leaders. Tr. 46-47. While on duty in Afghanistan, Applicant is occasionally permitted to communicate with his family members. For security reasons, he is not permitted to engage in unlimited communications with his family. Tr. 42-43.

Before his deployment to Afghanistan, Applicant maintained frequent contact with his parents. He typically talked with them once to twice a month by telephone before his Afghanistan assignment. Ex. 2. Since deploying to Afghanistan, he talks to them less frequently; every three to six months to check on their status. Tr. 54. He sees them in person every five to seven years. Ex. 2; Tr. 43-44. He last saw them in person in 2007. Before deploying to Afghanistan, he communicated with his parents monthly by telephone, and with his brothers and sister twice a month. See Ex. 2.

Since his deployment, Applicant is able to communicate with his parents and siblings less frequently due to security reasons. Tr. 53-54. He talks with his brothers who reside in Afghanistan by telephone every six months. Ex. 2. He has more frequent contact with his brother who resides in Canada: He speaks to this brother by telephone every three months. And he maintains contact with his sister and brother-in-law who reside in the U.S. on a bi-weekly basis. Ex. 2.

Applicant has no reason to believe that any of his family members residing in Afghanistan are at any risk to pressure, compromise, or coercion. Tr. 62-63. Except for his wife, none of his family members are aware of his assignment in Afghanistan. (Tr. 62-

### **Afghanistan's country status**

Afghanistan is a country in Southwestern Asia. It is sometimes referred to as the crossroads of Central Asia. See *Background Note: Afghanistan, supra*, at 2. It has had a turbulent history.

### **Early history**

Following invasions by Alexandria, the Scythians, the White Huns, and the Turks, the Arabs invaded Afghanistan in 642 AD and introduced Islam. *Id.*, at 3. Arab rule held for several hundred years before giving way to the Persians who controlled the region to 998 before succumbing to the Turkic Ghasnavids. *Id.* Turkish rule under Mahmud was short-lived and was followed by attempts of various princes to rule sections of the country before the Mongol invasion of 1219 under Genghis Khan. *Id.* For many centuries following Khan's death in 1227, the country was contested by a succession of chiefs and

princes. By the late 14<sup>th</sup> century, Tamerlane (a Khan descendent) incorporated Afghanistan into a vast Asian empire. *Id.*

In 1747, Ahmad Shah Durrani (the founder of what is known today as Afghanistan) established his control over most of Afghanistan. British expansion in the 19<sup>th</sup> Century was countered by Russian advances and precipitated Anglo-Afghan wars and later led to a boundary accord that created what would become modern Afghanistan. *See Background Note: Afghanistan, supra*, at 3.

Since the British relinquished control in August 1919, Afghanistan has been an independent state. *Background Note: Afghanistan, supra*, at 2-3. Between 1919 and 1973, Afghanistan moved away from its longstanding isolation under a succession of Muslim rulers: King Amanullah (1919-1929) Nadir Khan (1929-1933), and Mohammad Zahir Shah (Nadir Khan's 19-year-old son), who ruled Afghanistan for over 40 years (1933-1973). *See Background Note: Afghanistan, supra*.

Prime minister between 1953 and 1963, Sardar Mohammad Daoud mounted a military coup in 1973 and seized power amid charges of corruption and malfeasance against Zahir Shah and his royal family. Daoud proceeded to abolish the monarchy, abrogate the constitution, and declare Afghanistan a republic. *Background Note: Afghanistan, supra*. His economic and social reforms contributed little, however, to stabilizing political conditions in the country.

Following a Soviet-supported overthrow and assassination of Daoud in April 1978, a Marxist government was formed with the backing of the Soviets. *Background Note: Afghanistan, supra*, at 4. Sur Muhammad Taraki was installed as the country's president of the revolutionary council. Opposition to the Taraki government increased as many of members of Afghan elites, religious establishments, intelligentsia were imprisoned, tortured, or murdered. A revolt against the Marxist government occurred in the summer of 1978 and quickly spread into a countrywide insurgency. *Id.*

### **Soviet invasion**

Seeking to take advantage of the unrest following April 1978 coup, the Soviet Union quickly signed a bilateral treaty of friendship and cooperation with the new Afghan regime and increased its military assistance to the regime. *See Background Note: Afghanistan, supra*. Faced with a deteriorating security situation, the Soviets invaded Afghanistan in December 1979, killed the Afghan ruler, and installed Babrak Karmal (an exiled leader of the Parcham faction) as the country's prime minister. *Id.*

Afghan freedom fighters (mujahideen) who opposed the Karmal communist regime, armed with increased weapons and training assistance from the U.S. and its allies, collaborated with other Pesawar-based guerilla groups in the 1980s to destabilize the Karmal regime. The resistance movement eventually led to an agreement known as the Geneva Accords (signed by the front-line states of Pakistan and Afghanistan, the United States, and the Soviet Union). The agreement served to ensure that Soviet forces

withdrew from the country as committed in February 1989. See *Background Note: Afghanistan, supra*, at 5.

### **Ascendency of the Taliban**

By the mid-1990s, the Taliban had risen to power in reaction to the anarchy and increase of warlords in the aftermath of the withdrawal of Soviet forces. Many of the Taliban had been educated in madrassas in Pakistan with roots in rural Pashtun areas of the country. See *Background Note: Afghanistan, supra*, at 6. Beginning with its capture of Kandahar in 1994, the Taliban mounted an aggressive expansion of its control throughout Afghanistan. By the end of 1998, its forces occupied almost 90 percent of the country, and reduced its opposition largely to a small sections of the northeast and the Panjshir valley. *Id.*

Bolstered by its imposition of an extreme interpretation of Islam on the entire country, the Taliban committed massive human rights violations (particularly directed at women and children), and committed serious atrocities against minority populations. From the mid-1990s, the Taliban provided sanctuary to Osama bin Laden, and provided a base of operations for his and other terrorist organizations. *Background Note: Afghanistan, supra*. Bin Laden and his Al-Qaida group are known to have provided financial and political support to the Taliban, and acknowledged their responsibility for the September 11, 2001 terrorist attacks against the U.S.

Beginning in October 2001 (following the Taliban's refusal to expel bin Laden), the U.S. and its coalition partners initiated a military campaign, targeting terrorist facilities and Taliban military and political assets within Afghanistan. U.S. military and anti-Taliban forces routed the Taliban and caused their rapid disintegration.

After the fall of Kabul in November 2001, a UN-sponsored conference was created to restore stability and governance in Afghanistan. See *Background Note: Afghanistan, supra*. From this conference emerged a Transitional Authority headed by President Hamid Karzai. This authority (renamed the Transitional Islamic State of Afghanistan) was charged with the responsibility of drafting a constitution.

A new constitution was drafted and ratified by a constitutional loyal jirga on January 4, 2004. The Afghan constitution provides for indirect election of the National Assembly's upper house by the provincial councils and by reserved presidential appointments. On December 4, 2004, the country was renamed the Islamic Republic of Afghanistan. See *Id.*; *Country Reports on Human Rights Practices-2008: Afghanistan, supra*. Hamid Karzai was sworn in as Afghanistan's President on December 7, 2004 and presided over the new government's first convened parliament in late 2005. See *Country Specific Information, Afghanistan, supra*. Presidential and provincial elections are to be coordinated by the Afghanistan Independent Election Commission (IEC), with assistance from the UN. *Id.* Challenged presidential election results in 2010 have not been widely disseminated.

## **Political conditions in Afghanistan**

A new democratic government assumed control of Afghanistan in 2004 following a popular election. While the national government has continued to expand its authority, it has been hampered in its ability to deliver necessary social services and remains dependent on U.S.-led assistance. See *Background Note: Afghanistan, supra*, at 7. With its international community support at work, its ability to secure its borders and maintain internal order is increasing. Still, terrorists, fueled by Taliban and Al Qaida support, continue to assert power and intimidation within the country. See *Annual Threat Assessment of Intelligence Community*, Director of National Intelligence, *supra*, at 16-17. Safety and security remain key concerns because these terrorist organizations continue to target U.S. and Afghan interests by suicide operations., bombings, assassinations, car-jackings, assaults, and hostage taking. See *Country Reports on Human Rights Practices-2008: Afghanistan, supra*, at 9-10; *Country Specific Information, Afghanistan, supra*, at 2. Risks of terrorist activity remain extremely high at the present time.

Human rights conditions in Afghanistan remain poor by all reported accounts. State Department reports confirm active insurgent activity in Afghanistan. See *Country Reports on Human Rights Practices-2008: Afghanistan, supra*; No section of Afghanistan is safe or immune from violence. See *Travel Warnings, Afghanistan, supra*. Kabul, in particular, has experienced increased militant attacks in recent years, including rocket attacks, vehicle-borne IEDs, and suicide bombings. *Id.* Foreigners throughout the country continue to be targeted for violent attacks and kidnappings: some motivated by terrorism, and others by common criminal activity.

Where infrastructure is concerned, Afghanistan has still not been able to build effective, honest, and loyal provincial and district institutions and lacks a coherent tribal engagement strategy for unifying the country. See *Annual Threat Assessment of Intelligence Community*, Director of National Intelligence, *supra*, at 17. The Afghan drug trade remains a major source of revenue for corrupt officials, the Taliban, and other insurgent groups who conduct operations in the country. See *Country Reports on Terrorism 2008, Chapter 5-Terrorist Safe Havens, supra*, at 4.

## **U.S.-Afghanistan relations**

Since the fall of the Taliban, the United States has supported the creation of a broad-based government in Afghanistan, and has made a long-term commitment to help Afghanistan reconstitute and rebuild following years of war and unstable governments. The United States and its coalition partners in the international community currently provide important humanitarian assistance, capacity-building, security protection, counter-narcotic programs, and infrastructure projects. The U.S. has also brought important political influence to bear on the establishment of durable democratic principles that promote the rule of law and encourage transparent and accountable forms of government. See *Background Note: Afghanistan, supra*, at 13.

The U.S. and its international partners remain committed to assisting Afghans to realize their aspirations for a stable, democratic, and economically prosperous nation. See *Background Note: Afghanistan, supra*. The U.S. is also supportive of the Afghanistan government's commitment to the protection of women's rights, human rights, and religious tolerance. *Id.*

### **Applicant's finances**

In August 2005, Applicant opened a credit card account with creditor 2.a. Between August 2005 and March 2006, he used the credit card to cover his personal and business expenses associated with the pizza shop he operated. See Exs. 1 and 2; Tr. 47-48, 55-56. Unable to make a living from his pizza business, he closed its operations in March 2006. Ex. 2; Tr. 57-58. Since the account reached its high balance of \$20,000 in 2007, he managed to pay down almost \$10,000 on the account before he quit making payments due to his limited income. Ex. 2.

In 2008, creditor 2.a sold its account to a collection agency (A). This creditor contacted Applicant and worked out a monthly payment plan with him. For approximately six months, Applicant paid the creditor \$60 a month through an automatic withdrawal plan. Sometime in late 2008, the account was sold to another collection agency (B). At this time, the balance on the account was about \$18,194. See Exs. 2 and 3.

Applicant was contacted by collection agency B in April 2009 to reestablish a payment plan. Applicant established a monthly payment plan with this creditor in June 2009. Under Applicant's plan, he agreed to make \$30 a month payments for two years and then work out a lump-sum settlement for the balance. Tr. 49.

Applicant documents that he made regular monthly \$30 payments to the creditor between July 2009 and December 2009 and \$25 a month payments for the months of January and February 2010. See Ex. C; Tr. 49-50. Applicant accepted B's lump-sum settlement offer in February 2010 and remitted his \$3,584 check to collection agency B in March 2010 in full settlement of his account. Ex. E. He is credited by agency B with satisfying his account in full.

Applicant has no other delinquent debts and is current with all of his accounts. He is committed to keeping his accounts in current status. His credit reports reflect his accounts in pay as agreed status.

### **Endorsements**

Applicant is highly regarded by his command. His commanding officer describes him as skilled, dependable, and multi-talented. See Ex. A. He credits his understanding of the U.S. Army and Afghan cultures as an integral element of his command's achievements. He credited Appellant with displaying resilience and patience in his working with his company on its Afghan missions.



## **Policies**

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and all of the "[c]onditions that could mitigate security concerns," if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Foreign Influence**

*The Concern:* "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” See AG ¶ 6.

### **Financial Considerations**

*The Concern:* 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. 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, ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the revised AGs, a decision to grant or continue an applicant’s security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant’s eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government’s initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant’s eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. “[S]ecurity-clearance

determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is a respected linguist for a defense contractor who has family members who reside in Afghanistan. Trust concerns are raised under the foreign influence guideline due to Applicant’s longstanding family ties to Afghanistan. Although his contacts with family members residing in Afghanistan appear to be limited, they do involve parents and three brothers. Afghanistan itself is a country with a checkered history of wars, political instability, and violence. Afghanistan is also a strong ally of the U.S. and its coalition partners, who are committed to rebuilding the country.

Security concerns over Applicant’s finances are also raised because of a longstanding credit card debt that Applicant has since settled. Extenuating circumstances accompany this debt.

#### **Foreign influence concerns**

The Government raises security concerns over risks associated with Applicant’s parents, siblings, and their spouses who are either Afghan citizens residing in Great Britain, Canada, or the U.S., or are still residing in Afghanistan. Key to the Government’s foreign influence concerns are Applicant’s immediate family members who still reside in Afghanistan.

Despite encouraging efforts in the development of strategic partnerships between Afghanistan and the U.S. in recent years, Afghanistan remains a war-torn country and one still in the process of establishing a stable democratic government that is able to build effective, honest, and loyal provincial and district institutions, provide effective protections for its constituent groups, and maintain cross-border security. The historically close relationship between Applicant and his immediate family members (some who reside in the U.S., Great Britain, and Canada, and some who reside in Afghanistan) makes them potentially vulnerable to coercion and non-coercive measures.

Because Taliban and Al Qaida insurgents operating in Afghanistan have a history of violating Afghan domestic laws and regulations, as well as international laws, they are more likely to use improper and illegal means, or one of the other, to obtain classified information in Applicant’s possession or control through his family members still residing in Afghanistan. DC ¶ 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,” applies.

To date, none of Applicant's parents or siblings residing in Afghanistan have any history of being subjected to any coercion or influence. These historical antecedents do limit the severity of any potential conflict situation. However, the absence of any past coercive measures taken by Afghan authorities does not completely absolve Applicant from coercive risks in the future given Afghanistan's considerable history of wars, political instability, violence, hostage taking, and abusive measures taken against its own citizens. For these reasons, ¶ DC 7(b), "connection 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," has some application to Applicant's situation.

Still, none of Applicant's immediate family members have any identified prior affiliations or connections with any foreign governments (Afghanistan included) None have any affiliations with the Afghan government, or any other foreign government. Any potential conflict that might be associated with his parents, his immediate family members, and his wife's family is small and not likely to pose any conflicts of interest for Applicant in the foreseeable future.

As a nation, Afghanistan continues to be a country with emerging strategic relationships with the United States and is a front-line partner in the war on terror. Because of the security dangers that still confront U.S. and Afghan forces operating in the region, Afghanistan remains a country that presents a heightened risk. Afghanistan is also a country that is benefitting from long-term U.S. commitments to help the Afghan government and its tribal regions reconstitute and rebuild their institutions and infrastructure in the aftermath of years of war, human rights abuses, and political and economic mismanagement under Soviet-backed regimes and Taliban rule. Given the current geopolitical infrastructure that exists in Afghanistan, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant's can be characterized as somewhat reduced, commensurate with improved security and political conditions on the ground in the country.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Afghanistan. Unlike the old AGs, the new ones do take into account of the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

Applicant's situation is a special one for reasons that pertain wholly to his unique status and circumstances. Not only has he been careful to avoid any frequent

contact with his family members in Afghanistan, but he has been scrupulous about making certain his family members are not aware of his Army linguist assignment and whereabouts in Afghanistan. In special circumstances involving linguists who put themselves in harm's way by working in unstable countries where they have family members residing, the Appeal Board has been quick to note that such individuals are more likely to recognize, resist, and report any attempts to by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's strong connections to the U.S. and to his U.S. family members, community, and his employment as a translator in a combat zone make it highly unlikely he would ever resolve any potential conflict against his U.S. interests.

Based on his case-specific circumstances, MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S.," is available to Applicant. Neither Applicant nor his immediate or extended family residing in Afghanistan pose any specific heightened security risks that could subject them to potential pressures and influence from Iraqi government and military officials.

Of benefit to Applicant, too, is MC ¶ 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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant's demonstrated loyalty, patriotism, and professional commitments to the U.S. is well demonstrated and enough under these circumstances to neutralize all potential conflicts that are implicit in his relationships with his immediate and extended family residing in Afghanistan and other countries friendly to the U.S.

One other mitigating condition has application to Applicant's situation. MC ¶ 8(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." is fully applicable. His financial interests in Afghanistan are virtually non-existent, and are not likely to create any problem conflicts in the foreseeable future.

To complete a whole-person assessment of Applicant's foreign influence risks to ascertain whether they are fully compatible with minimum security clearance eligibility requirements, Applicant's substantial civilian contributions to U.S. security interests as an Afghan linguist in Afghanistan require careful balancing with the raised security concerns. His performance reviews that acknowledge his valuable contributions to U.S. military forces operating in Afghanistan are impressive. And he

is recognized for the important role he played on his command's linguist team, and for his many and substantial contributions he made to his assigned combat missions during his Afghan deployment.

Whole-person assessment is available also to minimize Applicant's exposure to conflicts of interests with his Afghan family members. Most importantly, Applicant is not aware of any risks of coercion, pressure, or influence that any of his family members might be exposed to. So, in Applicant's case, the potential risk of coercion, pressure, or influence being brought to bear on him, or any of his respective family members (whether or not they reside in the U.S. or Afghanistan) is minimal and mitigated.

### **Applicant's finances**

Applicant's pleading admissions of the debt covered in subparagraph 2.a of the SOR negated the need for any independent proof (see *McCormick on Evidence*, § 262 (3d ed. 1984)). The listed \$18,194 delinquent debt in the SOR is fully documented in his latest credit reports and provide ample independent proof of the debt. Applicant does not dispute the debt and has worked to pay it even before the issuance of the SOR in August 2009. Still, accumulation of this considerable debt, and his past inability to pay, or otherwise address it in a systematic fashion, warrants the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c) "a history of not meeting financial obligations."

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on government employees and contractors involved in other lines of government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of an applicant to make more concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about the sufficiency of the applicant's demonstrated trust and judgment necessary to safeguard classified information.

Extenuating circumstances account for much of the debt in issue. He incurred the debt in part during his struggles to keep his pizza business operational, and stopped paying on the debt only after he shuttered his business and had no income for over a year. Based on his evidentiary showing, Applicant's proofs are sufficient to establish extenuating circumstances associated with his single debt. As a result, MC ¶ 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior 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,” applies to Applicant’s circumstances.

In June 2009, Applicant reached a payment agreement with creditor 2.a’s assignee, and made agreed monthly payments for over six months. He settled his account in full in March 2010 with one agreed \$3,584 lump sum payment. Applicant is current in his finances and has no outstanding debt delinquencies. Based on his debt repayment, he may take advantage of two additional mitigating conditions of the financial considerations guideline: MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” and MC ¶ 20(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.”

Both under the applicable guideline and a whole-person assessment, Applicant is able to surmount the judgment questions raised by his accumulation of his one large debt. The debt itself is business-related for the most part and has since been settled and paid in accordance with the terms of the settlement Applicant reached with the creditor. His contributions to his country as a linguist working in Afghanistan and his community reinforce his trust demonstration and enable him to resolve security concerns about his finances.

Taking into account all of the documented facts and circumstances surrounding Applicant’s financial history, the extenuating circumstances associated with his mostly business-related delinquent debt, and his ability to settle the debt, Applicant is credited with mitigating financial concerns and restoring the state of his finances to stable levels commensurate with the minimum requirements for holding a security clearance. Favorable conclusions warrant with respect to the allegations covered by Guideline F.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in AG ¶ 2(a).

### **Formal Findings**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

<b>GUIDELINE B (FOREIGN INFLUENCE):</b>	<b>FOR APPLICANT</b>
Subpara. 1.a	For Applicant
Subpara. 1.b:	For Applicant
Subpara. 1.c:	For Applicant
Subpara. 1.d:	For Applicant
Subpara. 1.e:	For Applicant
Subpara. 1.f:	For Applicant

Subpara. 1.g:

For Applicant

GUIDELINE F (FINANCIAL CONSIDERATIONS):

FOR APPLICANT

Subpara. 2.a :

For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. Clearance is granted.

---

Roger C. Wesley  
Administrative Judge