



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 09-06978  
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Applicant for Security Clearance )

**Appearances**

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

September 13, 2012

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on November 25, 2008. (Government Exhibit 1) On May 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and E 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) effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on June 28, 2011, and requested an administrative decision without a hearing. Department Counsel requested that the case be converted to a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on July 21, 2011. A notice of hearing was initially issued on August 3, 2011, scheduling the hearing for September 6, 2011. The Applicant was in Afghanistan and unable to be present. The matter was rescheduled on January 20, 2012, and set for February 16, 2012. The Applicant was still unable to be present at the hearing. After extensive conversations with the Applicant's security department, the matter was rescheduled on March 9, 2012, and set for July 30, 2012. At the hearing, the Applicant presented four documentary exhibits, referred to as

Applicant's exhibits A through D, which were received without objection. He also testified on his own behalf. The Government presented three exhibits referred to as Government Exhibits 1 through 3, which were received without objection. The transcript of the hearing (Tr.) was received on August 7, 2012. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **REQUEST FOR ADMINISTRATIVE NOTICE**

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Afghanistan. (Tr. p.20.) Applicant had no objection. (Tr. p. 23.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

## **FINDING OF FACTS**

The Applicant is 61 years old and married. He is employed by a defense contractor as a Linguist, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence, which could result in the compromise of classified information.

The Applicant was born in 1950 in Kabul, Afghanistan. He grew up, attended high school, and served one year in the military in Afghanistan. In 1976, he immigrated to the United States to attend college with the intent of returning to Afghanistan. Instead, he remained in the United States and became a naturalized United States citizen in 1999. The Applicant is married and has two native-born American children. For the past three-and-a-half years he has been employed with a defense contractor, in a highly sensitive position stationed in Afghanistan. (Tr. p. 29.)

The Applicant testified that he comes from a very wealthy and influential family in Afghanistan. He explained that his father's family ruled Afghanistan for almost 200 years. They are of the same tribe as all of the kings of Afghanistan. (Tr. p. 39). His family is very well-known and respected by the Afghan people and hated by the Taliban. He also testified that culturally Afghan families are very close, as is his family. (Tr. p. 38.)

The Applicant has a number of relatives that include several cousins and an uncle who have held or are presently holding high ranking positions in the Afghan government. One of his cousins was a high level Afghan official. He is now retired and

living in the United States. (See allegation 1.(a) of SOR and Tr. p. 32.) The Applicant's uncle was a high ranking Afghan official in one capacity, and then he became a high ranking Afghan official for another agency. He is now living in the United States. (See allegation 1.(c) of SOR and Tr. pp. 36-37.) Another cousin, the daughter of a high ranking Afghan official, lives in Afghanistan but works for a United States company. (Tr. p. 43.) Another cousin was a high level Afghan official. He presently lives in the United States. (See allegation 1.(d) of SOR and Tr. p. 40.) The Applicant has a friend who is a high ranking Afghan official. (See allegation 1.(b) of SOR and Tr. p. 34.) The Applicant believes that his friend is still an Afghan citizen, but he has not had contact with him for the last five years. The Applicant's brother is a citizen of Afghanistan and resides in the United States. (Tr. pp. 41-42.) His two cousins and uncle, discussed above, are United States citizens.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness 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.

The Applicant completed two security clearance applications, one dated January 30, 2008, and the other dated November 25, 2008. (Government Exhibit 1.) In response to questions concerning his relatives and associates on the application, the Applicant failed to disclose any of his relatives or associates that have worked for or are presently working for a foreign government. (Government Exhibit 1.) He has provided no reasonable excuse for failing to answer these questions correctly. (Tr. p. 45.)

During an interview with a DoD investigator dated June 22, 2009, the Applicant failed to reveal that he had a friend who is a high ranking Afghan official. (Tr. p. 45.) The Applicant could not explain why he did not tell the investigator about this foreign friend. (Government Exhibit 3.)

During that same interview, the Applicant described his uncle and two cousins as "distant relatives" with whom he had no contact and learned of them from information from other family members. (Government Exhibit 3.) The Applicant testified, however, that he comes from a large, close, wealthy, influential family who is well known in Afghanistan. (Tr. p. 39.)

In response to interrogatories dated September 22, 2010, the Applicant was asked if he has any relatives or friends who have ever been employed by a foreign government. The Applicant answered, "NO." (Government Exhibit 2.) This was a blatantly false answer. (See Applicant's Answer to SOR and Tr. pp. 32 - 45)

The Applicant stated that he has 300 family members and that he listed his father, mother, brother and sisters. (Tr. p. 45.) He gave no legitimate reason as to why he failed to disclose any of his high ranking foreign government family members and/or his friend to the Government on his security clearance applications, during his interviews and in response to interrogatories. (Tr. pp. 44 - 45.) It is clear from the

record that he is close to his family. It can only be presumed that he did not want the government to know about these family members or his friend.

A letter of recommendation from the Applicant's immediate supervisor indicates that the Applicant has served with distinction in his position for the United States. He is said to have performed his duties admirably and with respect. His service has been exemplary and has helped our forces to accomplish their mission to great success. (Applicant's Exhibit B.)

A letter of recommendation from the commander states that the Applicant has served brilliantly in his position and has always acted with calm and cool demeanor. He is said to have performed his tasks with efficiency while respecting the culture of the Afghanistan and Pakistani people. (Applicant's Exhibit C.)

A letter from the military headquarters commanding officer indicates that the Applicant has performed his duties in an exceptional manner and has demonstrated loyalty, reliability, trustworthiness and integrity to the United States. He has served in a demanding position which he executed flawlessly over the past ten months. He has excellent skills and an ability to built rapport with high ranking Government officials. He has a unique ability to quickly process, analyze and translate with appropriate meaning invaluable information. (Applicant's Exhibit D.)

The Applicant has received several certificates of appreciation for his outstanding job performance. (Applicant's Exhibits A.)

I have taken official notice of the following facts concerning Afghanistan. Afghanistan is an Islamic republic. It has been an independent nation since August 19, 1919, after the British relinquished control. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union. In mid-1990's the Taliban rose to power largely due to the anarchy and the divisions of the country among warlords that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin-Laden since the mid-1990's, to al-Qa'ida generally, and to other terrorist organizations. After September 11, 2001 terrorist attacks, U.S. demands that Afghanistan expel Bin-laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001.

Although there has been some progress since the Taliban was deposed, Afghanistan still faces many daunting challenges, principally defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic and political infrastructure. Human rights problems included extrajudicial killings; torture and other abuse; poor prison conditions, widespread official impunity; ineffective government investigations of local security forces; arbitrary arrest and detention; judicial corruption; violation of privacy rights, restrictions of freedom of religion, limits on freedom of movement; violence and societal discrimination against

women; sexual abuse of children; abuses against minorities; trafficking in persons; abuse of worker rights; and child labor. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical, and travel to all areas of Afghanistan remains unsafe, due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups and the possibility of terrorist attacks.

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline B (Foreign Influence)

6. *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.

#### Condition that could raise a security concern:

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.

#### Conditions that could mitigate security concerns:

None.

### Guideline E (Personal Conduct)

15. *The Concern.* 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.

Conditions that could raise a security concern:

16. (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

16. (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The voluntariness of participation;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative

process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

## CONCLUSION

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in foreign influence and dishonesty that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

This evidence indicates unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant’s conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government’s case under Guidelines B and E of the SOR.

Under Foreign Influence, Guideline B, Disqualifying Condition 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. None of the Mitigating Conditions are applicable.

This is a unique case. It is noted that the Applicant has lived most of his life in the United States, has become a naturalized United States citizen, and has two native born American children. Despite this, he comes from a very wealthy, close, influential family in Afghanistan, who are or have been high level officials in the Afghan government. These relatives, who are or have been high level officials, are foreign

contacts that pose a significant security risk. His family is well-known in Afghanistan and as such the Applicant, who carries the name, is a prime target for the Taliban. This in turn subjects the United States to an undue risk of danger. Although his high ranking foreign government family members are now United States citizens, they obviously maintain relatively close ties with the Afghan Government because of the positions they have held or presently hold. Multiple family members who maintain close communication with the Applicant, and who may be influenced by the Afghan Government, is of utmost concern here. Therefore, the emotional bond that the Applicant has with his foreign family members are foreign contacts that poses a security risk. Under the heightened scrutiny analysis, the Applicant's family in Afghanistan pose a significant security risk. Accordingly, I find against the Applicant under this guideline.

Under Personal Conduct, Guideline E, Disqualifying Conditions 16. (a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, and 16. (b) *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative* apply. None of the Mitigating Conditions are applicable.

I find that the Applicant intentionally falsified two security clearance applications by failing to disclose his foreign contacts, in response to interrogatories, and during an interview with the investigator from DoD. His failure to provide truthful and candid answers during the security clearance process raises serious questions about his trustworthiness. Accordingly I find against the Applicant under this guideline.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information. I have also considered his favorable evidence, including his awards and favorable letters of recommendation. The evidence does not mitigate the negative effects his foreign influence and personal conduct can have on his ability to safeguard classified information.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.



## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1:           Against the Applicant.
- Subpara. 1.a.:    Against the Applicant.
- Subpara. 1.b.:    Against the Applicant.
- Subpara. 1.c.:    Against the Applicant.
- Subpara. 1.d.:    Against the Applicant.
- Subpara. 1.e.:    Against the Applicant.
- Subpara. 1.f.:    Against the Applicant.
  
- Paragraph 2:           Against the Applicant.
- Subpara. 2.a.:    Against the Applicant.
- Subpara. 2.b.:    Against the Applicant.
- Subpara. 2.c.:    Against the Applicant.
- Subpara. 2.d.:    Against the Applicant.

## **CONCLUSION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey-Anderson  
Administrative Judge