



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-03193

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

06/29/2012

**Decision**

HOWE, Philip S., Administrative Judge:

On January 9, 2010, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On October 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. 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 on September 1, 2006.

Applicant answered the SOR in writing on October 26, 2011. Applicant requested his case be decided on the written record in lieu of a hearing.

On January 13, 2012, Department Counsel submitted the Department's written case. A complete copy of the File of Relevant Material (FORM), containing Items 1

through 6, was provided to the Applicant on February 4, 2012. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the 30-day time allowed that would have expired on March 3, 2012. I received the case assignment on June 7, 2012, after the file was reassigned from another administrative judge due to caseload considerations. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## **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 Items 7 to 13. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant denied the allegations in Subparagraph 1.e, 1.i, 1.j, and 1o, and he admitted all other allegations from 1.a to 1.k. (Items 1, 2)

Applicant is 48 years old, divorced from his first wife, and now married to his second wife. His current wife was born in Afghanistan and is an Afghan citizen. They were married in 2007. Applicant denied this allegation, but did not present any documentation to contradict it. Applicant was born in Afghanistan and came to the United States in December 1991. He became a naturalized U.S. citizen in February 2001. He has a child who was born in the United States in 1999. He works as a linguist for a defense contractor and has done so since August 2007. (Items 3-6)

Applicant's mother is a resident and citizen of Afghanistan. Applicant is in contact with her at least monthly. He sends her \$200-400 monthly to help support her. (Items 4-6)

Applicant has two brothers, who reside in Afghanistan and are citizens of that country. He has contact with them about every two months. Applicant has two other brothers, who are citizens of Afghanistan and reside in Germany. Applicant communicates with them about every three to six months. At one time one of these brothers worked for the German government managing a refugee camp. Now he is a car dealer. A fifth brother is an Afghan citizen. He lives in the United States and sells car parts for a living. (Items 4-6)

Applicant has one sister, who resides in Afghanistan where she is a citizen. She is a teacher employed by the Afghanistan government. Applicant has contact with her every two weeks. Applicant has a second sister, who is a citizen and resident of

Afghanistan. She is a school principal employed by the Afghanistan Department of Education. Her husband is a general in the Afghan Army. Applicant has contact with him about every six weeks. The general knows Applicant is a linguist working for the United States. (Items 4-6)

Applicant's father-in-law, mother-in-law, and brother-in-law are residents and citizens of Afghanistan. Applicant has contact with his father-in-law monthly. The father-in-law is a colonel in the Afghan Army. (Items 4-6)

Applicant has a friend, who is a citizen and resident of Afghanistan. The friend is Applicant's co-worker. Applicant has two nephews, one of whom resides on Germany. Both are citizens of Afghanistan. The second nephew lives in Afghanistan. Applicant last had contact with them in 2007. (Items 4-6)

Applicant provided financial support to most of his family when they lived in exile as refugees in Pakistan from the mid-1990s to 2001. Applicant sent them \$660 to \$700 monthly. (Item 6)

Applicant did not submit any financial information about himself. He did not offer any character statements from co-workers about his duty performance or competency in his employment. He did not request a personal hearing so his credibility cannot be evaluated.

## **Afghanistan**

I take administrative notice of the facts set forth in the Afghanistan documents. 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. The U.S. Department of State Human Rights 2010 Report states that 20 schools were attacked from March to October 200 and 126 students killed by the Taliban. Teachers are threatened by the Taliban. (Items 7-13)

## Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines 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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

According to Directive ¶ E3.1.14, the Government must 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 the 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B, Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes three conditions that could raise a security concern and may be disqualifying in this case:

- (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;
- (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; and
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant lives with his wife, who is a legal resident of the United States but a citizen of Afghanistan. Two of Applicant's brothers live in Afghanistan, as do two sisters. His mother to whom he sends several hundred dollars monthly for her support lives in Afghanistan. Applicant speaks to various members of his immediate family anywhere from every two weeks to every six months. Two brothers live in Germany while retaining Afghan citizenship. Living in Afghanistan creates a heightened risk for his relatives because they are in teaching and the Afghan army, primary targets of the Taliban insurgent attacks.

Applicant's sisters are teachers in the Afghan school system, operated by the government. Teachers are a target of the Taliban fighters. One sister is married to a general in the Afghan Army, who is aware of Applicant's current employment.

Applicant's two nephews are citizens of Afghanistan. One resides there and one lives in Germany.

Applicant's father-in-law is a colonel in the Afghan army. He resides in Afghanistan and is a citizen of that country.

Applicant's mother lives in Afghanistan and is a citizen of that country. He has contact with her.

The family members who reside in Afghanistan and work in the schools and the military raise security concerns under AG ¶ 7(a), (b), and (c) because of the heightened risk caused by their work.

AG ¶ 8 provides three conditions that could mitigate security concerns raised under this guideline:

(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; and

(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.<sup>1</sup>

Applicant's siblings and their husbands live in Afghanistan, the U.S., or Germany. Afghanistan raises a security concern because of the Taliban insurgency. The security

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<sup>1</sup> 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).

situation in Afghanistan is tenuous, according to the U.S. State Department. Applicant's connection to his educator sisters, who are in a profession targeted by the Taliban, could place Applicant in a position to have to choose between that relationship and his duty to the United States.

Applicant's father-in-law (a colonel) and brother-in-law (a general) are officers in the Afghan army. The general knows about Applicant's employment. Their positions during the insurgency place them in risky positions. Applicant could be placed in a position to choose between them and the interests of the U.S.

Applicant's mother living in Afghanistan could also cause a conflict of interest if she were pressured to compromise Applicant's situation. Two brothers and two sisters in Afghanistan create a great potential for pressure and coercion against Applicant. 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. AG ¶ 8(a) has no application to any of the above relatives.

Applicant did not establish that he has such deep and longstanding relationships in the United States when contrasted with the number of relatives living and working in Afghanistan in the military and schools, and his support of his mother. Applicant did not provide any information on his assets in the United States or in any other part of the world. His child was born in the United States but that is not enough to overcome the concerns raised by his relatives in Afghanistan. It is not evident from his written statements that he will resolve any conflict of interest between family members living in Afghanistan in favor of the United States. AG ¶ 8(b) does not apply.

Contact by Applicant with his relatives in Afghanistan is not casual or infrequent so there is a risk of foreign influence. His maternal financial support shows his contact is not casual. AG ¶ 8(c) does not apply.

### **Whole-Person Concept**

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

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

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case.

Several factors weigh against granting Applicant a security clearance. First, there is a significant risk of terrorism and human rights abuses in Afghanistan. More importantly for security purposes, terrorists hostile to the United States actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's mother and sisters, along with the military officer relatives, to obtain such information. Second, his family members with whom he maintains frequent contact are resident citizens of Afghanistan.

The Directive provides that, "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." (AG ¶ 2 (b))

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Foreign Influence. I conclude the whole-person concept against Applicant.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.d, 1.g, and 1.h:	For Applicant
Subparagraphs 1.b, 1.c, 1.f, 1.i, 1.j, and 1.k:	Against Applicant



## **Conclusion**

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

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PHILIP S. HOWE  
Administrative Judge