



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



In the matter of: )  
 )  
----- ) ISCR Case No. 10-05418  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

04/16/2012

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations but has mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is denied.

**Statement of the Case**

On January 12, 2000, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> On September 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on September 18, 2011.<sup>2</sup> On an unspecified date in 2011, DOHA issued him another set of interrogatories. He responded to the interrogatories on September 18, 2011.<sup>3</sup> On October 21, 2011, DOHA issued a Statement of Reasons (SOR) to him,

<sup>1</sup> Item 4 (SF 86), dated January 12, 2010.

<sup>2</sup> Item 5 (Applicant's Answers to Interrogatories, dated September 18, 2011).

<sup>3</sup> Item 8 (Applicant's Answers to Interrogatories, dated September 18, 2011).

pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline B (Foreign Influence), and detailed reasons why DOHA was unable to find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on November 13, 2011. In an undated notarized statement, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on December 27, 2011, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on January 29, 2012, but as of March 16, 2012, he had not submitted any further documents or other information. The case was assigned to me on March 30, 2012.

### **Ruling on Procedure**

In the FORM, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Islamic Republic of Afghanistan (Afghanistan), appearing in six U.S. Government publications. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Afghanistan in publications of the U.S. Department of State<sup>4</sup> and the Director of National Intelligence.<sup>5</sup>

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,<sup>6</sup> as set forth below under the Afghanistan subsection.

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<sup>4</sup> U.S. Department of State, Bureau of South and Central Asian Affairs, *Background Note: Afghanistan*, dated November 28, 2011; U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Afghanistan*, dated July 13, 2011; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2010 Human Rights Report: Afghanistan*, dated April 8, 2011; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2010*, dated August 18, 2011; and U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Afghanistan*, dated December 1, 2011.

<sup>5</sup> Director of National Intelligence, *Statement for the Record on the Worldwide Threat Assessment of the U.S. Intelligence Community for the House Permanent Select Committee of Intelligence*, dated February 10, 2011.

## Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations and foreign influence in the SOR (¶¶ 1.a.-1.c., and 2.a.-2.c.), adding explanations. Applicant's admissions and other comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 51-year-old employee of a defense contractor. He has been serving as a translator in Afghanistan since January 2010. He was previously employed in the U.S. as a driver with several different companies from September 1999 until December 2009.<sup>7</sup> Applicant has never served in the U.S. military,<sup>8</sup> and has never had a security clearance.<sup>9</sup> He attended a college in the U.S. from June 2001 until October 2004, but did not receive a degree.<sup>10</sup> Applicant was married in 1991, and has been separated since 1997.<sup>11</sup>

## Financial Considerations

There was nothing unusual about Appellant's finances until about 2008 when two of his credit card accounts became delinquent, and were charged off.<sup>12</sup> At some point, he apparently had unspecified "medical issues" to which he was attending. He used one account for continuing upkeep on his truck, as well as for gambling,<sup>13</sup> and another account, which was supposed to be his emergency back-up for his truck, also for gambling.<sup>14</sup> Appellant was unable to pay off the accounts, and it is unclear if he made any payments towards those balances. In September 2011, he stated he would take

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<sup>6</sup> Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

<sup>7</sup> Item 4, *supra* note 1, at 14-22.

<sup>8</sup> *Id.* at 24.

<sup>9</sup> *Id.* at 45-46.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.* at 28-29.

<sup>12</sup> Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 28, 2010), at 5.

<sup>13</sup> Item 8 (Personal Subject Interview, dated June 6, 2010), at 2, attached to Applicant's Answers to Interrogatories.

<sup>14</sup> *Id.*

care of one of the accounts when he returned to the U.S.,<sup>15</sup> without specifying a time-frame. When he responded to the SOR in late 2011, he again reiterated his intention to “take care of” both accounts during his next vacation to the U.S.,<sup>16</sup> once again, without furnishing a time-frame.

The SOR identified the two continuing delinquencies as reflected by a 2010 credit report totaling approximately \$70,827, with both accounts in a charged-off status.<sup>17</sup> Only one such account appears in a 2011 credit report.<sup>18</sup> Applicant’s American Express card, with an unpaid balance of \$23,103 (SOR ¶ 1.b.) was used for his truck (\$7,000) and gambling (\$16,103), and his Bank of America card, with an unpaid balance of \$47,724 (SOR ¶ 1.a.) was used for gambling. Applicant has offered no documentary evidence to indicate he had ever attempted to contact the creditors to make payment arrangements or to indicate any payments already made.

Although Applicant furnished an approximate value of his current net worth as \$100,000,<sup>19</sup> he did not specify how that number was arrived at or whether or not his net worth is in real estate, cash, bank or credit union accounts, investments, etc. It is unclear as to the general state of Applicant’s finances as he has not submitted a personal financial statement indicating his monthly net income, monthly expenses, or if he has any funds available for discretionary savings or spending.

There is no evidence that Applicant has received any financial counseling regarding money management, debt consolidation, or repayment plans. Although he denied that he is still gambling,<sup>20</sup> Applicant did not submit any documentation to indicate he had received counseling for his gambling.

## Foreign Influence

Applicant was born in Afghanistan,<sup>21</sup> but nothing is known regarding his early years, or primary education. He served honorably with the Afghan military.<sup>22</sup> He immigrated to the U.S. in 1997,<sup>23</sup> and became a naturalized U.S. citizen in 2009.<sup>24</sup> Both

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<sup>15</sup> Item 5, *supra* note 2, at 3.

<sup>16</sup> Item 3 (Applicant’s Answer to the SOR, undated), at 2.

<sup>17</sup> Item 6, *supra* note 12, at 5.

<sup>18</sup> Item 7 (Equifax Credit Report, dated May 10, 2011), at 1.

<sup>19</sup> Item 8, *supra* note 3, at 10.

<sup>20</sup> Item 5, *supra* note 2, at 3.

<sup>21</sup> Item 4, *supra* note 1, at 6.

<sup>22</sup> *Id.* at 24-25.

<sup>23</sup> *Id.* at 29.

<sup>24</sup> *Id.* at 7.

of his parents were born in Afghanistan, and they are now deceased.<sup>25</sup> Although Applicant was married in 1991, he has been separated since he came to the U.S. in 1997, and has had no contact with his wife since 2008, when she refused to speak with him.<sup>26</sup> Applicant believes his wife may have remarried.<sup>27</sup> Applicant has three sisters who are citizens and residents of Afghanistan.<sup>28</sup> They are homemakers and do not work outside their respective family homes.<sup>29</sup> Applicant is aware of the full name of one brother-in-law, one name of another brother-in-law, and does not know the name of the third brother-in-law, and knows one sister has children, but does not know if the other sisters have children.<sup>30</sup> One brother-in-law has a position with a school in Afghanistan.<sup>31</sup> Applicant speaks with his sisters by telephone between one and two times per year.<sup>32</sup>

## Afghanistan

Formerly under the control of the United Kingdom, Afghanistan received independence in August 1919. It is a rugged and mountainous country in Southwestern Asia, approximately the size of Texas, and has common borders with Pakistan on the east and the south, Iran on the west, and Russia on the north. In 2009, the population was about 28 million people. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979, occupation by the Soviet Union until 1989, and civil war between the occupiers and home-grown freedom fighters, known as mujaheddin. Anarchy ensued, and fighting continued among the various ethnic, clan, and religious warlords and their respective militias even after the Soviet Union withdrew from the country. By the mid-1990s, the Taliban rose to power and controlled significant portions of the country, imposing repressive policies and sharia law, guiding all aspects of Muslim life. Afghanistan became a sanctuary for terrorist groups.

After the September 11, 2001 terrorist attacks in the United States, U.S. demands that Afghanistan expel Osama Bin-Laden and his followers were rejected by the Taliban. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power. Following a few years of governance by an interim government, a democratic presidential election took place in October 2004, and a new democratic government took power. Despite the election, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. Terrorists continue to

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<sup>25</sup> *Id.* at 30-32.

<sup>26</sup> Item 8, *supra* note 3, at 1.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 1-2.

target United States and Afghan interests through suicide bombings, assassinations, and hostage taking.

Afghanistan's human rights record remains poor, for there are continuing extrajudicial killings; torture and other abuse; widespread official corruption and impunity; ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; judicial corruption; violations of privacy rights; violence and societal discrimination against women; sexual abuse of children; trafficking in persons; and restrictions on freedoms of religion, the press, assembly, and movement.

Taliban insurgents retain the capability and intent to conduct attacks and kidnappings of Americans, other Western nationals, and members of the local populace. The U.S. has made a long-term commitment to help Afghanistan rebuild itself after decades of war, and along with others in the international community, provides substantial assistance, focusing on reintegration, economic development, improving relations with Afghanistan regional partners, and steadily increasing the security responsibilities of the Afghan security forces. Furthermore, there is increased terrorist support coming into Afghanistan from Pakistan and Iran. Nevertheless, while the security situation remains volatile and unpredictable throughout Afghanistan, there are tensions between the U.S. and Afghanistan over limiting U.S. military operations.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."<sup>33</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>34</sup>

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. The entire process is a conscientious scrutiny of a number of

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<sup>33</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>34</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>35</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>36</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>37</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>38</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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<sup>35</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>36</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>37</sup> *Egan*, 484 U.S. at 531

<sup>38</sup> See Exec. Or. 10865 § 7.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *"inability or unwillingness to satisfy debts"* is potentially disqualifying. Similarly, under AG ¶ 19(c), *"a history of not meeting financial obligations"* may raise security concerns. In addition, AG ¶ 19(f) may apply if there are *"financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern."* Applicant's financial difficulties commenced in 2008 when he started using two credit cards for gambling. He ran up a total balance of approximately \$70,827, and as of March 2012, he had not furnished any evidence that the accounts had been paid. Both accounts remain in a charged-off status. AG ¶¶ 19(a), 19(c), and 19(f) apply.

The guidelines also include examples of conditions that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *"the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment."* In addition, when *"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,"* AG ¶ 20(b) may apply. Evidence that *"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"* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."*

To qualify for application of the "good-faith" mitigating condition, an appellant should present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the appellant's debts. There is no definition of the term "good-faith" in either the Regulation or the AG. However, it is reasonable to interpret the concept of "good-faith" as requiring a showing that a person



acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.

None of the mitigating conditions apply. The delinquencies have remained unresolved since 2008, and there is no evidence that the financial problem is under control. While Applicant contends that he no longer gambles, he has taken no steps to resolve his delinquent accounts, or indicated an ability to do so. He has promised to pay off his debts when he returns to the United States from Afghanistan, but has furnished no time-frame for his anticipated payment of these delinquent debts. Applicant has not received any financial counseling. His inaction casts doubt as to his current reliability, trustworthiness, or good judgment.

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

The security concern relating to the guideline for Foreign Influence is 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 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.

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.<sup>39</sup> Applicant's relationship with his wife, three sisters, and one brother-in-law in Afghanistan are current security concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), "*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*" is potentially disqualifying. Similarly, under AG ¶ 7(b), "*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that*

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<sup>39</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

*information*” may raise security concerns. I find AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant’s respective relationships with his family members and extended family members who are Afghan citizen-residents, to determine the degree of “heightened risk” or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where “*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.*” Similarly, AG ¶ 8(b) may apply where the evidence shows “*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.*” In addition, AG ¶ 8(c) may apply where “*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.*” In this instance, Applicant has a non-relationship with his wife and a casual and infrequent relationship with his brother-in-law. Accordingly, AG ¶ 8(c) applies as it pertains to them. However, considering Applicant’s closer and relatively frequent relationship with his three sisters, AG ¶ 8(c) does not apply.

In assessing whether there is a heightened risk because of an applicant’s relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant’s conduct and circumstances, in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.<sup>40</sup> In fact, the Appeal Board has cautioned against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”<sup>41</sup>

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

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<sup>40</sup> See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

<sup>41</sup> ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

As noted above, since October 2001, when U.S. forces and coalition partners led military operations in Afghanistan, forcing the Taliban out of power, there has been first an interim government, and then a democratic government in Afghanistan. Nevertheless, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. It is less likely that the Afghan government would attempt coercive means to obtain sensitive information. The real concern in this instance is not the Afghan government, but rather al-Qaida and Taliban terrorists. While Applicant's wife, sisters, and brother-in-law, still reside in Afghanistan, despite Applicant's efforts not to contact them while he is in Afghanistan, there is substantial risk – a “heightened risk” – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

There is no evidence that Applicant's wife, sisters, or his brother-in-law are, or have been, political activists, challenging the policies of the Afghan government; that terrorists have approached or threatened Applicant or his wife, sisters, or brother-in-law, for any reason; that the Afghan government, al-Qaida, or the Taliban have approached Applicant; that his wife, sisters, or brother-in-law, currently engage in activities that would bring attention to themselves; or that his wife, sisters, or brother-in-law, are even aware of Applicant's work. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Afghan government, al-Qaida, or the Taliban, which may seek to quiet those who speak out against them. Applicant has significant connections to the United States, having lived in the United States for 15 years. Moreover, he wants his security clearance so that he can remain in Afghanistan and assist U.S. Armed Forces. He has offered to continue to risk his life to support the United States' goals in Afghanistan, and has shown his patriotism, loyalty, and fidelity to the United States. Applicant has not met his burden of showing there is little likelihood that those relationships could create a risk for foreign influence or exploitation. Applicant has “such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” As to his wife, three sisters, and brother-in-law in Afghanistan, AG ¶¶ 8(a) partially applies, and 8(b) fully applies.

### **Whole-Person Concept**

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

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>42</sup>

There is some evidence in favor of mitigating Applicant's situation. Applicant has offered to continue to risk his life to support the United States' goals in Afghanistan, and has shown his patriotism, loyalty, and fidelity to the United States. He is fully aware of the risks to himself, and he is also aware that his family members in Afghanistan are at risk from al-Qaida and Taliban terrorists. These circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has a history of gambling, using two credit cards to amass a delinquent balance of approximately \$70,827. That balance was charged off and Applicant has made no efforts to resolve the account other than to promise doing so when he returns to the United States sometime in the future. Applicant's inaction in resolving his financial delinquencies casts doubt as to his current reliability, trustworthiness, or good judgment. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c.:	For Applicant

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<sup>42</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

## **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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ROBERT ROBINSON GALES  
Administrative Judge