



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



In the matter of: )  
)  
) ISCR Case No. 10-05667  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

July 22, 2011  
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**Decision**  
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DUFFY, James F., Administrative Judge:

Applicant has not mitigated the Government’s security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On January 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B. DOHA took this action 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on January 21, 2011, and elected to have the case decided on the written record in lieu of a hearing.<sup>1</sup> On February 24, 2011, Department Counsel prepared a file of relevant material (FORM) that included a request for administrative notice of facts about Afghanistan. On February 28, 2011, Applicant was mailed a complete copy of the FORM and advised that he could file objections or submit other material for consideration within 30 days of its receipt. Applicant received the FORM on March 13, 2011. On March 26, 2011, he submitted a response that included character reference letters. Department Counsel had no objection to his response. The Government's exhibits in the FORM are admitted into the record, and the request for administrative notice is granted. The facts administratively noticed are set out below in the findings of fact.<sup>2</sup> Applicant's response and character reference letters are also admitted into the record. The case was assigned to me on May 12, 2011.

### **Findings of Fact**

The SOR contains seven allegations. Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.f, and 1.g, and denied SOR ¶¶ 1.c and 1.e. SOR ¶ 1.c alleged, "Your father is a citizen and resident of Afghanistan who served in the Afghanistan National Army and is a former employee of the Afghan government." In denying SOR ¶ 1.c, Applicant stated, "Yes, my father was a former low ranking employee of the Afghan Government. 'But he never served for the Afghan National Army.'" SOR ¶ 1.e alleged, "Your brother is a citizen of Afghanistan residing in Kazakhstan, married to your Kazakhstani sister-in-law." In denying SOR ¶ 1.e, Applicant stated, "No, [his brother] is not a citizen of Afghanistan. He is a citizen of Kazakhstan and residing in Kazakhstan." His admissions are incorporated as findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.<sup>3</sup>

Applicant is a 39-year-old linguist employed by a defense contractor. He has worked for his current employer since December 2007. He was born in Afghanistan. He attended high school in the United States for about six months in 2004 and received a GED certificate. He also attended a college in the United States for four months in 2005. His Public Trust Position Application (SF 85P) reflects that he began residing in the United States in August 1999, and he has maintained a U.S. residence since then. He became a naturalized U.S. citizen in July 2008. He is married. His SF 86 lists no children.<sup>4</sup>

Applicant's wife was born in Afghanistan. She is a citizen and resident of Afghanistan. They married in August 2006. She is a high school graduate and is

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<sup>1</sup> Item 3. Applicant made his election by circling the words "without a hearing" on the letter forwarding the SOR.

<sup>2</sup> FORM request for administrative notice includes seven source documents.

<sup>3</sup> Items 1, 3.

<sup>4</sup> Items 4, 6, 7.

unemployed. She has skills to work as a tailor. He is working on obtaining a U.S. immigration visa for her. He anticipates that she will travel to Pakistan or India to obtain the visa because the U.S. Embassy in Afghanistan is not issuing visas to Afghan nationals. While Applicant was working in Afghanistan in May 2010, he had contact with his wife every two or three days depending on mission requirements.<sup>5</sup>

Applicant's mother and father were born in Afghanistan. They are citizens and residents of Afghanistan. His mother was a school teacher, but left that job after the Taliban took over and began creating trouble for her. She is now retired. His father worked in an office that oversaw bazaar operations by ensuring no one was overcharged or cheated. His father retired 15 years ago and receives a pension of \$380 per year. Applicant maintains weekly to monthly contact with his parents. He has sent money to his parents. He sent them \$200 to \$300 using the Hawala system of transferring money in 2004. Since then, he has used companies to transfer the money.<sup>6</sup>

Applicant has three brothers and two sisters. All of his siblings were born in Afghanistan. Two of his brothers and his two sisters are citizens and residents of Afghanistan. His oldest brother is a doctor who works for the Afghanistan Ministry of Health. Applicant is close to his oldest brother, who lives with his parents, and talks to him whenever he calls his parents. His other brother in Afghanistan also is a doctor, but works in a hospital. Both of his sisters were teachers (elementary and preschool). He does not know whether one of his sisters still works as a teacher. He is not close to his sisters. Both of his sisters are married. One of his brothers-in-law works for a communications company.<sup>7</sup>

Applicant has a brother who is a citizen and resident of Kazakhstan. In 1988, his brother traveled to Kazakhstan to study civil engineering under a scholarship. At that time, the Soviet Union controlled Kazakhstan. After graduating, his brother decided to stay there and married a local woman whom he met in school. For the last 15 years, his brother and sister-in-law have worked in a bazaar buying and selling goods. In July 2009 and June 2010, Applicant traveled to Kazakhstan to visit his brother. In 2009, Applicant loaned his brother \$50,000 to help him buy a home. In 2010, he loaned him another \$50,000 to assist him in paying off the mortgage. So far, his brother has not paid him back.<sup>8</sup>

Applicant's mother-in-law and father-in-law are citizens and residents of Afghanistan. His father-in-law is a driver, and his mother-in-law is a teacher. He has an uncle who served in the Afghan Army as a mechanic and tailor. He does not know how

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<sup>5</sup> Items 6, 7.

<sup>6</sup> Items 5, 7.

<sup>7</sup> Items 5, 6, 7.

<sup>8</sup> Item 7.

long his uncle served in the Army or what rank he attained. His last contact with his uncle was when he was married.<sup>9</sup>

Applicant has only told his wife and three brothers that he is working with the U.S. Government in Afghanistan. For security reasons, he has not told other members of his family what he does for a living. He stated that his family would be at risk if his type of employment was known in the community. He reportedly stated, “[He] believes educated people love America but ‘stupid’ people may hurt his family if they were to discover what he does. [He] hasn’t told them because there would be no reason to take unnecessary risks.”<sup>10</sup>

Applicant cheated on his wife during a trip to Mexico (date unknown). His wife does not know of that event. However, he indicated that he intends to tell her face-to-face when he finds the courage to do so. He has a close friend in Afghanistan to whom he gave \$5,000 so that it could be used for Applicant’s family in case of an emergency. This money was used to pay for Applicant’s father’s surgery.<sup>11</sup>

Applicant provided numerous character letters and letters of recommendation from senior military officers, senior enlisted personnel, and civilian personnel stationed with him in Afghanistan from 2008 to the present. Those writing on his behalf describe him as an excellent interpreter who has served with distinction and professionalism. His positive attitude, sincere approach, and superior skills set him apart from other translators and cultural advisors. He is referred to as a combat multiplier in the counter-insurgency environment and a great asset. He has served as an interpreter for an agriculture-business development team and an Army engineering company. He also served as the interpreter for a brigade commander who stated he has no reservations about Applicant’s loyalty and dedication to the United States. The brigade commander and the command sergeant major both stated, “[Applicant’s] cultural knowledge and language skills have been extremely beneficial in hundreds of key leadership engagements between village leaders, village elders, village Mullahs, local government, provincial government and the Government of the Islamic Republic of Afghanistan officials and military leaders of Task Force [XX].” As part of his duties, Applicant has traveled throughout the Task Force’s area of operations and has gone on convoys.<sup>12</sup>

Afghanistan is located in Southwestern Asia and borders Pakistan, Iran, and Russia. It has been an independent nation since 1919, after the British relinquished control. A monarchy ruled from 1919 until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. In 1979, Soviet forces invaded and occupied Afghanistan. A resistance movement eventually led to an agreement

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<sup>9</sup> Items 3, 5, 7.

<sup>10</sup> Item 7.

<sup>11</sup> Item 7.

<sup>12</sup> Applicant’s submission dated March 26, 2011.

known as the Geneva Accords, signed by Afghanistan, Pakistan, the United States, and the Soviet Union, which ensured Soviet forces withdrew by February 1989. The resistance party was not part of the Accords and refused to accept it. A civil war ensued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to anarchy and the existence of warlords. The Taliban sought to impose extreme interpretation of Islam and committed massive human right violations. The Taliban also provided sanctuary to Osama Bin-Laden, Al Qaida, and other terrorist organizations.

After the September 11, 2001, terrorist attacks, demands to 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 in November 2001. The new democratic government took power in 2004, after a popular election. Despite that election, terrorists including Al-Qaida and the Taliban continue to assert power and intimidation within the country. Safety and security are key issues, because these terrorists target United States and Afghan interests by suicide operations, bombings, assassinations, carjacking, assaults, and hostage taking. At this time, the risk of terrorist activity remains extremely high. The country's human rights record remains poor and violence is rampant.

Civilians continue to bear the brunt of the violence and increased attacks. Despite the loss of some key leaders, insurgents have adjusted their tactics to maintain momentum following the arrival of additional U.S. forces. It is suspected that the Taliban was most likely responsible for suppressing voter turnout in the August 2009 elections in key parts of the country. The Taliban's expansion of influence in northern Afghanistan since late 2007 has made the insurgency a country-wide threat.

Afghan leaders continue to face the eroding effect of official corruption and drug trade. Criminal networks and narcotics constitute a source of funding for the insurgency in Afghanistan. Other insurgent groups and anti-coalition organizations also operate in Afghanistan. Insurgents have targeted non-government organizations, journalists, government workers, and United Nations workers. Instability along the Pakistan-Afghan frontier continued to provide Al-Qaida with leadership mobility and the ability to conduct training and operational planning, targeting Western European and U.S. interests. The United States Department of State has declared that the security threat to all American citizens in Afghanistan remains critical as no part of the country is immune to violence.

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the

factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *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 concern 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 conditions that could raise a security concern and may be disqualifying. I have considered all of them, and the following disqualifying conditions potentially apply:

- (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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

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. Applicant's wife, parents, two brothers, two sisters, mother-in-law, father-in-law are citizens and residents of Afghanistan. He maintains close contact with his wife, parents, and one brother in Afghanistan. He has provided his parents money and paid at least part of his father's surgery. Applicant's contact with relatives living outside of the United States is sufficient to raise a security concern. I find both of the above disqualifying conditions apply.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an unstable government, a family member is associated with or dependent upon the foreign government, or the country is known to conduct intelligence operations against the U.S. In this regard, Applicant's brother works for the government and his father receives a pension from the government.

There is sufficient evidence of the insurgency operations being conducted in Afghanistan against American forces. There is also evidence that Afghanistan has a dismal human rights record and has active terrorist groups operating within its borders. This places the burden of persuasion on Applicant to demonstrate that his contacts in Afghanistan do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the U.S. and his connections to family members and his former employers. With its negative human rights record, its government, and the

violent insurgency that operate within the Afghan borders, it is conceivable that Applicant's family members could be vulnerable to coercion. Such circumstances in Afghanistan create a heightened risk.

Applicant denied SOR ¶ 1.e, indicating his brother in Kazakhstan is not a citizen of Afghanistan, but is a citizen of Kazakhstan. No evidence about Kazakhstan was presented. I find in favor of Applicant on SOR ¶ 1.e because that allegation is not accurate and now has very limited relevance in evaluating the security concerns arising from Applicant's contacts and interests in Afghanistan.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8. The following mitigating conditions potentially apply:

(a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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.

Applicant contacts in Afghanistan are not casual, infrequent, or minimal. He has extensive and close family ties in that country. His wife, parents, two brothers, and two sisters are citizens and residents of Afghanistan. One of his brothers is a doctor in the Afghan Ministry of Health. His mother left her job as a teacher because of problems the Taliban created for her. He has an uncle who served in the Afghan military. For security reasons, Applicant has not told all of his family members that he working in support of the U.S. Government. Specifically, he is concerned that, if members of the community became aware of his current occupation, it may place his family members at unnecessary risk. Given his extensive family contacts in Afghanistan and the security conditions there, Applicant could be placed in a position of having to choose between the interests of foreign family members and the interests of the United States. AG ¶ 8(a) and 8(c) do not apply.

Based on record evidence, it appears Applicant first resided in the United States in April 2003 and became a U.S. citizen in July 2008. Since then, he has been working as an interpreter in Afghanistan. He loaned his brother in Kazakhstan \$100,000. His



financial holdings in the United States and Afghanistan are unknown. None of Applicant's immediate family members are citizens or residents of the United States. When considering his contacts and interests in the United States in comparison to those in Afghanistan, I cannot find that his sense of loyalty to his family members in Afghanistan is so minimal that he can be expected to resolve any conflict of interest in favor of the U.S. interest. I find AG¶ 8(b) does not apply.

In cases of this nature, a specific analysis is necessary. The Appeal Board has stated:

As a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.<sup>13</sup>

Applicant has worked with the Army in Afghanistan for about three years. As part of his duties, he has traveled throughout the Task Force's area of responsibility and has gone on convoys. Considering the dangerous combat conditions that exist in Afghanistan, his duties involve inherent risks. Moreover, senior military officers who have observed Applicant's performance have indicated they have no reservations about his loyalty and dedication to the United States. However, the exact nature and extent of the dangers that Applicant may have faced in Afghanistan are unknown. Likewise, his compliance with security procedures and regulations under the existing conditions in that country is largely unknown. Based on record evidence, I cannot find that Applicant's service in Afghanistan fits within the Appeal Board's exception. Specifically, the evidence does not support a determination that his actions in dangerous circumstances in Afghanistan establishes that his ties and sense of obligation to the United States are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States.<sup>14</sup>

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<sup>13</sup> ISCR Cases No. 06-25928 at 4 (App. Bd. Apr 9, 2008) (internal citations omitted). See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) citing ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May, 30, 2006); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006); ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006).

<sup>14</sup> See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006).

## 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2 were addressed under that guideline, but some warrant additional comment. Applicant has been a U.S. citizen for almost three years. Since then, he has been supporting the U.S. military in Afghanistan. Senior officer and enlisted personnel support granting Applicant a security clearance. Nevertheless, Applicant has extensive family contacts in Afghanistan that create security concerns. Those security concerns are not mitigated by the evidence that Applicant has presented. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under the Foreign Influence guideline.

## 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:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f-1.g:	Against Applicant

## **Conclusion**

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

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James F. Duffy  
Administrative Judge