



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



In the matter of:)	
)	
)	ISCR Case No. 10-05909
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: Alan V. Edmunds, Esquire

06/13/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the concerns raised under foreign influence and foreign preference, but has not mitigated the security concerns under the guidelines for financial considerations and personal conduct. Accordingly, his request for a security clearance is denied.

Statement of the Case

On September 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) setting forth security concerns under Guidelines B (Foreign Influence), C (Foreign Preference), F (Financial Considerations), and E (Personal Conduct) of the Adjudicative Guidelines (AG).¹ Applicant submitted an

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

undated, notarized Answer to the SOR in which he denied the allegations under Guidelines C and E.² He admitted the allegations under Guideline B, except for 1.a and 1.c, and admitted the allegations under Guideline F, except for 3.f. Applicant also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on December 16, 2011, and the case was assigned to me on January 12, 2012. DOHA issued a Notice of Hearing on February 8, 2012, and I convened the hearing as scheduled on March 20, 2012. Department Counsel offered seven exhibits, which I admitted as Government Exhibits (GE) 1 through 7. Applicant testified, offered the testimony of one witness, and submitted 31 exhibits, which I admitted as Applicant Exhibit (AE) A through EE. I held the record open to allow Applicant to submit additional documentation. He submitted seven additional documents. Department Counsel had no objection. I admitted the documents as AE FF through LL. DOHA received the transcript (Tr.) on March 29, 2012.

Procedural Ruling

Department Counsel amended the SOR to correct a typographical error under Guideline B. The original allegation at subparagraph 2.f referenced “subparagraph 3.a. below.” That wording is deleted, and the following is inserted in its place: “subparagraphs 2.a., 2.b., and 2.c., above.”

I take administrative notice of facts relating to Afghanistan, set forth in six documents submitted by Department Counsel. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant’s admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant’s response to the SOR, and the record evidence, I make the following findings of fact.

Applicant, 56 years old, was born in Afghanistan. He attended high school there and worked as an auto repairman. He came to the United States in 1981, when he was about 26 years old. He has not had an Afghan passport since it expired in 1982. He attended a U.S. college for several months in 1983. He married a U.S. citizen in 1982 and they divorced in 1984. He became a U.S. naturalized citizen in 1989. Applicant does not own property in the United States and lived with his brother. He operated his

² Applicant’s program manager assisted Applicant with his SOR Answer, because English is not Applicant’s first language. The manager misunderstood the allegations, and misrepresented their meaning to Applicant. Based on this misinterpretation, Applicant answered “Admit” to allegations 2.c and 2.f under Guideline E. His program manager informed Applicant’s attorney on February 21, 2012, that these responses were in error, and Applicant’s intent was to answer “Deny.” I conclude that Applicant denies these two allegations. (AE A, N)

own pizza restaurant from 1992 to 2004. He was unemployed after selling his business in 2004. Between 2004 and 2006, he supported himself on the profits from the sale of the restaurant. He worked intermittently between 2006 and 2008, and began working for his current employer in August 2008. (GE 1, 3, 4; AE L; Tr. 52-52, 65-67, 94, 102)

In 2005, Applicant returned to Afghanistan and met a woman. They married in December 2005, and lived with her family. Applicant returned to the United States in March 2006 to “apply for my wife and seeking to go back to work.” He obtained a position with a defense contractor (W) in May 2006, was granted a secret security clearance, and returned to Afghanistan in June 2006. Through W, he worked as a linguist and cultural advisor to a U.S. coalition partner (X) from June to December 2006. (GE 1, 5; AE L; Tr. 52-52, 65-73)

In January 2007, Applicant returned to the United States. He was unemployed from January to April 2007, and lived with his brother. In April 2007, he returned to Afghanistan, and was unemployed until October 2007. He lived intermittently with his wife’s family or his sister’s family. He was then self-employed as a linguist and guide for U.S. forces from November 2007 to February 2008. He was unemployed until May 2008, when he returned to the United States. In August 2008, he started working for his current employer and returned to Afghanistan. Applicant’s position involves “training counter-narcotics police, supplying linguists to intelligence agencies, and providing support to NATO and U.S. public affairs efforts in Afghanistan.” He does not own property in Afghanistan, but has lived there since 2008, while working with U.S. forces. Applicant testified that he has no obligations to the Afghan government, and receives no government benefits. (GE 1, 3, 4; AE L; Tr. 52-52, 72-78, 81-83, 95)

Applicant’s wife, an Afghan citizen, is a homemaker. She has never visited or lived in the United States. He filed a U.S. immigrant petition for her in 2006. Applicant applied for a visa for her to come to the United States, and she was interviewed for the visa in May 2010. As of January 2011, her visa was pending and she plans to eventually apply for U.S. citizenship. They have two children, who are one and two years old. They were born in Afghanistan and have U.S. citizenship through Applicant.³ The children have U.S., but not Afghan, passports. In January 2011, Applicant stated that his wife and children will move to the United States after she receives the visa, and live with Applicant's brother. Applicant would then return to Afghanistan to work. (GE 1, 2, 3, 4; AE C, D; Tr. 42-44, 68-69, 79-80, 86, 101-102)

Applicant's brother has lived in the United States for about 14 years. He is a legal U.S. permanent resident, and a citizen of Afghanistan. He worked at Applicant’s pizza restaurant. Applicant does not know where his brother is currently employed. Applicant lives with his brother when he is in the United States. (GE 3; Tr. 85-86)

³ In his Answer to the SOR, Applicant stated his child is a dual citizen of the United States and Afghanistan. At the hearing, he stated that his children are only citizens of the United States. (Answer; Tr. 44)

Applicant has additional family members who are citizens and residents of Afghanistan, including his sister, stepmother, three stepbrothers, mother- and father-in-law, brothers-in-law, and one uncle.⁴ His sister's husband is deceased, and her son, daughter-in-law, and grandchildren live with her. In his 2009 interrogatory response, Applicant said, "When I am in Kabul, I can count on living there. My wife stays there all the time. When I am in Afghanistan, this is my home." He also stated he did not pay his sister rent, but provided her with some financial support. Currently, he stays primarily with his wife's family, but sometimes with his sister, and sometimes on base. Applicant now sees his sister once every three or four months. (GE 2, 3; Tr. 81-85)

Applicant lost touch with his stepmother and stepbrothers when he moved to the United States in 1981. When he went to Afghanistan in 2005, he re-established the relationship. Applicant testified that they work in a retail shop that sells farm supplies.⁵ Since 2005, he sees them once every few years, and last saw them about three years ago.⁶ Applicant's wife, sister, and stepbrothers have no connections with the Afghan government. (GE 2, 3; Tr. 44-48, 83-90)

Applicant's mother-in-law is a homemaker, and his father-in-law is a farmer and village elder. As an elder, his duty is to settle disagreements among the villagers. Applicant's brother-in-law (his sister-in-law's husband) works for NATO in Afghanistan. Applicant's other brother-in-law (his wife's brother) is a farmer, and lives with Applicant's wife and their parents. Applicant's uncle is a farmer. In his 2010 affidavit, Applicant said he saw his uncle about monthly. At the hearing, he testified that he had not seen his uncle in about four years. (GE 2; Tr. 44-48, 83, 86-88, 91-92)

Financial Considerations

From 1992 to 2004, Applicant and a partner owned a pizza restaurant in the United States. Applicant's business declined and in 2002, he filed for bankruptcy protection under Chapter 13. He successfully completed the plan, and it was discharged in 2005. On March 22, 2012, seven years after completing his bankruptcy, Applicant took an online course in financial management. The course satisfies a requirement of his Chapter 13 bankruptcy. After he sold his restaurant, he was unemployed from 2004 to May 2006, when he obtained the job with W. After his termination in December 2006, he was unemployed until November 2007. He worked as an independent contractor for U.S. forces in Afghanistan until February 2008. He was unemployed from February until May, 2008, and then returned to the United States "to start the work and to work on my

⁴ The SOR alleges Applicant has three uncles, but Applicant testified that two died within the past few years. (GE 2; Tr. 47, 91)

⁵ The record is unclear about Applicant's stepbrothers' occupations, because Applicant said in his 2009 subject interview that his stepbrothers are farmers. (GE 3)

⁶ It appears Applicant may have been confused during direct examination by the term "stepbrothers." When asked about his brother who lives in the United States, Applicant described his "brothers" who live in Afghanistan and work in a retail shop. (Tr. 45-46)

credits.” In August 2008, he obtained employment with a U.S. company and started his current job, which was located in Afghanistan. (GE 3, 6; AE J, L, Y, II; Tr. 52-53, 75-76, 93-95)

Applicant's initial salary at his current employment was approximately \$20,000 annually, and he now earns \$79,311. His monthly gross income is \$6,154. His expenses and bills total \$5,000, leaving a monthly net remainder of approximately \$1,154. Applicant's March 2012 credit report shows no real estate, installment, or other loans, no open accounts, and one closed credit card account with a zero balance. (AE J, GG, II, JJ, KK, LL; Tr. 93-94, 99-100)

The Internal Revenue Service (IRS) filed liens totaling \$12,981 against Applicant for unpaid taxes for 2002 (\$3,915); 2003 (\$1,123); and 2006 (\$7,943). The liens for 2002 and 2003 relate to business taxes for Applicant's pizza restaurant; the lien for tax year 2006 relates to Applicant's personal income taxes. He stated he did not have the money to pay the tax he owed. He contacted the IRS starting in 2009, and visited his local IRS office when he was in the United States. He also attempted to reach the agency while he was in Afghanistan. The IRS granted Applicant time to pay the liens. In his January 2011 interrogatory response, he stated, “the next time I return to the United States, I will make contact with the IRS and make arrangements to settle these debts.” He paid \$21,831 on December 14, 2011, using funds he earned from his current employment to satisfy the liens. He testified that this amount covered taxes he owed for 2002, 2003, and 2006, and he does not owe any other taxes.⁷ He has filed his tax returns every year. He waited until December 2011 to pay the debts because he did not know how to pay online. Following a withdrawal from his savings to pay his tax debt, Applicant had a total of approximately \$129,000 in his U.S. checking and savings accounts. (GE 3, 4, 6; AE V, GG, KK; Tr. 53-55, 92-97)

Based on Applicant's admission in his security clearance application, the September 2011 SOR alleges Applicant was more than six months past due on a telephone company account in the amount of \$2,733. However, he disputes the amount, stating that the company overcharged him for phone calls to his wife in Afghanistan, which should have cost \$455. He listed the debt in his 2009 security clearance application, noting that he disputed the amount with the creditor. He testified that the company made a mistake, and “I was back and forth with them.” In his 2011 interrogatory response, he stated that the company offered a settlement of \$1,500, but Applicant rejected it. As of January 2011, the debt was still in dispute. His March 2012 credit report does not list the debt. (GE 1, 3, 4, 7; AE J; Tr. 55-56)

⁷ The evidence is unclear on whether Applicant has paid all of the tax he owed. He testified that the \$21,828 he paid covered his debt for all his outstanding taxes, but his payment document shows that the payment applied to tax year 2006. Applicant's March 2012 credit report indicates that he had tax liens for 2002 (\$148); 2003 (\$142); 2004 (\$129); and 2007 (\$1,133). The credit report does not indicate if they were federal or state tax liens. Each of these liens is listed as released. (AE J, V; Tr. 92)

Applicant has no knowledge of a judgment that was filed against him by a collection agency in 1996 for a delinquent debt of \$880. He tried to contact the company, without success. He did not dispute the debt with the court or the credit reporting agencies. (GE 4, 7; AE J; Tr. 56, 94, 100-101)

Personal Conduct

In May 2006, Applicant began his position with a defense contractor, W, as a linguist and cultural advisor in Afghanistan. Through W, he started working for coalition partner X in Afghanistan in June 2006. He sustained injuries to his knee and groin from a fall while working in-country for X. The doctor's notes indicate his injuries resulted from fatigue after "sustained activity in a harsh environment." The injuries limited his mobility and ability to do manual work. In September 2006, he had surgery for the groin injury. Four weeks of light duty was prescribed, but Applicant states that he returned to duty before his convalescence was complete. (GE 5 at 13-14; AE E)

In a December 9, 2006 memorandum, the interpreter manager at X noted Applicant's negative work performance: Applicant complained about the work assignments, conditions, and long hours; he was repeatedly counseled about the appropriate way to resolve grievances, which he did not follow; and he was removed from three different areas of work for personnel issues. He was described as "unsuitable for work in a military environment." The manager was concerned that Applicant was exposed to sensitive and classified aspects of coalition operations and that some of Applicant's complaints "are made without regard to operational security and relate to classified matters" that could affect safety of the forces. (GE 5 at 6)

In the same memorandum, the interpreter manager informed W that Applicant was being terminated, and related the following. On December 4, 2006, Applicant acted in a belligerent manner toward a female NCO. He was told that he was "no longer required for duty and should stand down" and that he would be flown to Kabul at the first opportunity. On December 5, the interpreter manager told Applicant that he would be leaving on a flight to Kabul three days later, and he would be paid until the end of his contract on December 16, 2006. Applicant was also told to return on December 6 to be debriefed before departure, to discuss security obligations and confidentiality, and to return X's equipment. The interpreter manager states that Applicant left on December 6 without notice, and without signing a non-disclosure agreement or being debriefed. (GE 5 at 4-6)

In his affidavit of October 2009, Applicant stated he thought his manager at X (interpreter manager) did not like him. In several documents written in December 2006 and January 2007, Applicant listed other complaints about conditions at X, including the following: The employee who was in control of Applicant's shifts and assignments did not like Applicant and gave Applicant night shifts two weeks straight, used obscene language, and required Applicant to work while he was sick with a fever; Applicant was accused of giving his cellphone to local translator, but when the perpetrator of this

misappropriation was discovered, he (the translator) was not held accountable, and Applicant received no apology; the authorities did not listen to Applicant's complaints; soldiers kept "blue photos" in their rooms, and bought "blue DVDs" from a base store;⁸ and W's regional manager told "sex stories" in front of females. In regard to the translator who gave his cellphone to a local civilian, Applicant asked in his December 20, 2006 statement, "[W]hy he [translator] is still on job and where I am not . . . guilty the[y] dismissed me."⁹ (GE 3, 5 at 10, 19-20)

On December 16, 2006, W's regional manager met with Applicant about X's allegations. He told Applicant his contract with W had ended, and W would fly him to his home in Kabul. He also told Applicant to surrender his CAC card, because he was no longer a W employee, and to wait off-base for instructions about the flight. Applicant's statement of December 20, 2006 supports W's description of events, noting that on December 16, the W site manager asked him to surrender his card and leave the base. In the same statement, Applicant said that he called another W manager: "[T]hen again I called Mr. [name] he said that you are dismissed from your job . . ." In describing this scene in a letter dated January 24, 2007, Applicant stated, "[name] told me that I have been fired from the job." Also, in a letter dated January 24, 2007,¹⁰ describing the sequence of events in December 2006, he states, "[Y]ou have mentioned that due to the 'insecurity and rudeness' I was fired." (GE 5 at 1-2, 10-11, 18)

On December 17, 2006, Applicant came to the base gate "because I want to complaint (*sic*) against [W] to high Authorities." When he was not admitted, he called several people and, according to the regional manager, yelled at managers over the phone. Applicant and the regional manager exchanged insults over the phone. The manager told Applicant he was not to return because he was not on contract, and he was being investigated regarding an alleged security violation. Applicant contacted several people trying to be admitted to the base. One of them "...told me that I have been fired from the job."¹¹ Subsequently, the W regional manager instructed the entry control and badging personnel to prohibit Applicant from entering the base. (GE 5 at 1-2; GE 5 at 21)

⁸ While Applicant does not define the word "blue," I take it in this context to indicate indecent or pornographic material.

⁹ I interpret Applicant's comment to indicate that he questions why the perpetrator was not dismissed from his job, but he (Applicant) was dismissed. (GE 5 at 19)

¹⁰ The recipient of the letter is identified only by first name. That first name appears in an email dated December 17, 2006 from the W regional manager to other W managers. However, I cannot determine from the record whether the recipient is a W manager. (GE 5)

¹¹ Other than a first name, Applicant does not identify the person who told him he was fired at this point. The record does not indicate whether he was military member, a civilian contractor, or a W employee. (GE 5 at 11)

On December 27, 2006, Applicant contacted W's regional manager. The manager asked if Applicant wanted W to arrange his flight back to the United States. The manager did not consider Applicant's response appropriate, and they became angry and again exchanged insults. Applicant said he would complain. The manager stated that Applicant said he would "go live with the Taliban and Al Qaeda and talk to them." (GE 5 at 7-8)

Applicant denies the accusation concerning the Taliban and al-Qaeda. In his October 2009 security interview, he called it a "garbage statement" and "shameful." He denies contact with either group. He noted that he listened to communications from the Taliban and then warned U.S. soldiers about them. When asked at the hearing if he ever spoke with the Taliban or al-Qaeda, Applicant testified, "It is a very shame. Never I did this, no." He attributes this accusation to racism of the W site manager, because the site manager and Applicant are from different ethnic groups. (GE 3 at 20, GE 5 at 11; Tr. 51)

Applicant completed a security clearance application in July 2009. He indicated that he left W because his "contract expired." He answered "No" when asked if, within the previous seven years, he had been fired, quit, left under unfavorable circumstances, or was laid off. In an affidavit dated October 2009, Applicant stated that he had not been counseled by X, released from duty by X, or terminated by W. Applicant stated during his security interview in October 2009 that he had never been involuntarily terminated from employment. (GE 1, 2, 3; Tr. 48-52)

In a statement dated February 10, 2012, Applicant characterizes his departure from X and W as follows:

Mr. [interpreter manager] was not a good boss. I decided to terminate my employment with [W] and find other work, taking my last two weeks of leave at the end of my contract, which expired effective December 16, 2006. On December 4, Mr. [interpreter manager] directed me to begin my exit from Afghanistan. At no time did he inform me I was terminated, and the timetable was consistent with my belief that I was departing on schedule, with my last vacation days carrying me to the end

I categorically deny that I was informed I was fired from any job. (AE L)

At the hearing, Applicant denied he engaged in misconduct during his employment with X, that he was counseled by X, or that he was moved among three work areas because of personnel issues. He does not know how these accusations arose. He testified that he was not terminated by either X or W. He left only because his contract with W had ended. Applicant also denied falsifying his security clearance application and his affidavit. (Tr. 48-50)

A program manager in Applicant's company testified that Applicant has been invaluable in assisting with safety issues, logistics, and local vetting of linguist candidates in Afghanistan. The witness was in Afghanistan in 2006, when Applicant worked for W. The witness is also familiar with W, which is a competitor of Applicant's current employer. Concerning W's business practices, he testified that, "[W]hen they don't have an agreement with the linguist, they usually tend to file reports and falsify reports and hurting the linguist." He had no first-hand knowledge of such acts. He was unaware Applicant was terminated by W, and understood that Applicant's contract with W had ended. He stated he would have been informed when Applicant was hired if Applicant had personnel issues when he worked for W in 2006. (AE AA, HH; Tr. 25-40)

The program manager, and others who wrote references for Applicant, stated that Applicant saved the lives of American contractors. The witness was present during an event in 2006, when a van carrying five American contractors was involved in a traffic accident in Kabul, where several Afghan civilians died. An angry mob threw rocks and prepared to burn the vehicle, while local police stood by. Applicant intervened, and "placed himself between the angry mob and the [company] personnel and escorted them at a full run while an angry mob chased them." The contractors were taken to the embassy, and the mob burned the car. Applicant provided a copy of a local newspaper that reported the incident. The U.S. company awarded Applicant a certificate and coins for his "exceptional bravery" in saving the employees' lives. (AE AA, F, I, P, Q, U, CC)

Applicant worked in Afghanistan with either the U.S. forces or a coalition partner for periods between 2006 and 2008. He has worked there continuously since August 2008 for his current employer. He submitted numerous certificates of appreciation, and photographs showing him with combat troops in Afghanistan. He offered 19 letters that attest to his character and contributions to the war effort. Military members who worked with him in 2008 noted that he has proved himself in a "situation of extreme stress and potential loss of life," and was willing to work in dangerous locations. A Department of State employee, who formerly worked for Applicant's employer and managed Applicant, states that Applicant "always uses discretion in meeting mission objectives" and has the utmost commitment to the United States. (AE B, F, H, I, EE)

The references of two former federal government agents described Applicant as brave and intelligent. One noted that Applicant "[H]as worked to support U.S. objectives...despite the great danger to himself and family members." Other defense contractors working in Afghanistan commented on Applicant's "sterling performance record," professionalism, and reliability. A high-level civilian who has worked in Afghanistan and Iraq for the past five years stated that their mission would not have succeeded without Applicant's judgment, integrity, and diplomacy. (AE G, O, R, W, Z, BB, DD)

References from Applicant's current employer, including the chief executive officer, extoll Applicant's trustworthiness and dedication, and describe him as a "true patriot." An in-country program manager stated that Applicant "has placed himself

between belligerent crowds and local police to extricate U.S. employees from explosive situations on at least three occasions. In addition, he controls government equipment worth tens of thousands of dollars, and during the 2011 inventory, the manager found no deficiencies. He noted that he feels “completely secure traveling outside the protection of military forces when he’s escorting me I implicitly trust [Applicant] and feel that he would place himself between me and any potential danger given that he could do so.” Another program manager at Applicant’s company notes that Applicant puts himself in dangerous positions while protecting Americans, which reflects on his loyalty to the United States. He was present when Applicant escorted several American contractors away from an angry mob of local civilians who were threatening their lives. The manager formerly conducted background investigations, is aware of security requirements, and has “no reservations in recommending [Applicant]” for a security clearance. (AE M, P, Q, S, T, X)

Administrative Notice

The Islamic Republic of Afghanistan (Afghanistan) is a country in Southwestern Asia approximately the size of Texas (249,935 square miles). Pakistan borders it on the east and the south. Iran borders it on the west and Russia to the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. In 2009, the population was about 28 million people with about 3 million Afghans living outside Afghanistan.

Afghanistan is an Islamic Republic with a democratically elected president. It has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union 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 percent 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 including al-Qaida and the Taliban, continue to assert power and intimidation within the country. Safety and security are key issues because these terrorist organizations target United States and Afghan interests by suicide operations, bombings, assassinations, car-jackings, assaults, or hostage taking. The country’s human rights record is poor and violence is rampant. The risk of terrorist activities remains extremely high. According to 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.

According to the Department of State, the United States has made a long-term commitment to help Afghanistan rebuild itself after years of war. The United States and others in the international community currently provide resources and expertise to

Afghanistan in a variety of areas, including humanitarian relief and assistance, capacity-building, security needs, counter-narcotic programs, and infrastructure projects. During a 2009 speech at West Point, President Obama laid down the core U.S. goals in Afghanistan: to disrupt, dismantle, and defeat al-Qaeda and its safe havens in Pakistan, and to prevent their return to Afghanistan. He stressed that the United States is willing to support the Afghan president's focus on reintegration, economic development, improving relations with Afghan regional partners, and steadily increasing the security responsibilities of the Afghan security forces. The United States commitment to Afghanistan is balanced against the inherent dangers to citizens and residents of the ongoing conflict in Afghanistan.

Policies

Each security clearance decision must be an impartial and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.¹² Decisions also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest¹³ for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.¹⁴ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to safeguard classified information. The "clearly consistent with the national interest" standard compels resolution of any doubt about an applicant's suitability for access to classified information in favor of the Government.¹⁵

¹¹ Directive § 6.3.

¹² See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹³ See *Egan*, 484 U.S. at 528, 531.

¹⁴ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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.

I have considered all the conditions under AG ¶ 7 that may be disqualifying, especially the following:

- (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's loyalty to the United States is not in question. He has been a U.S. citizen for 23 years. He has shown his loyalty through actions that placed his own life at risk. However, Applicant's foreign ties raise security concerns because of his ongoing family relationships. He lives in Afghanistan, where he has numerous family members, including his wife and two children. His foreign ties place him in a position where he might have to choose between his family's interests and the interests of the United States.

Family ties to residents or citizens of a foreign country are only disqualifying under Guideline B, if they create a conflict of interest or a heightened risk of foreign exploitation. Applicant lives with his wife and in-laws, who are citizens of Afghanistan.

He sometimes lives with his sister and her family, who are also citizens of Afghanistan. The country in question must be considered.¹⁶ Terrorists including al-Qaida and the Taliban, operate within Afghanistan. They target United States and Afghan interests by suicide operations, bombings, or hostage taking. The risk of terrorist activities is extremely high. Insurgents plan attacks and kidnappings of Americans and other Western nationals. Applicant has lived in Afghanistan intermittently between 2005 and 2008, and continuously since 2008. His ties and contacts with his foreign family in Afghanistan represent a heightened risk of foreign exploitation, and a potential conflict of interest between his ties to his family and the requirement to protect classified information. AG ¶ 7(a), (b), and (d) apply.

I have also considered the mitigating conditions under AG ¶ 8, especially the following:

(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.

Applicant has a close relationship and frequent contact with his immediate family, who are Afghan citizens. Given his location in a combat zone, and his employment by a U.S. contractor, he could be placed in a position of exploitation, or one where he could be forced to choose between U.S. and foreign interests. AG ¶ 8(a) and (c) cannot be applied.

Although Applicant has ties to Afghanistan through his family, he also has ties to the United States. He lived here from 1981 to about 2005. His brother is a legal permanent resident of the United States, and Applicant lived with him during the more than two decades he lived in the United States. His future plans involve having his family move to the United States, and applying for his wife's U.S. citizenship. His two children are U.S. citizens and have U.S. passports. Although he does not own real property in either the United States or Afghanistan, his most significant financial

¹⁵ See ISCR Case No. 04-07766 at 3 (Ap. Bd., Sep 26, 2006)

investment was in a restaurant he operated in the United States for 12 years. He has substantial savings, close to \$130,000, in a U.S. bank. Other than intermittent periods of unemployment, Applicant has worked for U.S. forces and/or coalition partners in Afghanistan since 2006.

The concern under Guideline B is that applicants with foreign ties could have divided loyalties, may be induced to help a foreign entity, or may succumb to coercion by a foreign interest, to the detriment of U.S. interests. The Appeal Board has held in several cases that an applicant's demonstrated willingness to place himself or herself in harm's way for the sake of United States interests is a significant factor when analyzing Guideline B issues. In ISCR Case No. 07-00034, it held that, although mere statements of intent carry little weight,

[A]n applicant's proven record of action in defense of the U.S. is very important and can lead to a favorable result for an applicant in a Guideline B case. See, e.g., ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). In this case, Applicant has served the U.S. military as a translator in dangerous circumstances in Afghanistan and has risked his life to protect American personnel there.¹⁷

In ISCR Case No. 06-25928, the Appeal Board held that an applicant's service to the United States at the risk of his own personal safety “. . . constitute[s] important evidence that applicant's ties and sense of obligation to the U.S. could be sufficiently strong that he could “[b]e expected to resolve any conflict of interest in favor of the U.S.
”¹⁸
. . .

Here, the record shows that Applicant has supported U.S. forces since 2007. In one instance, Applicant ran to the aid of five American contractors whose lives were in jeopardy from an angry Afghan mob. Without regard for his own safety, he pulled them from the van, and ensured that they were brought to safety at the U.S. embassy. Several of his character references and his witness attest to the incident, which was reported in a local newspaper. Applicant has acted to protect U.S. personnel in several such incidents, according to the Afghanistan in-country manager. A former federal agent noted that Applicant's position places his family in danger. His continued support of U.S. forces shows he is unlikely to succumb to pressure related to his family. Given the record evidence of Applicant's willingness to put U.S. interests ahead of his own safety, I conclude that he can be expected to resolve any conflict of interest in favor of the U.S. interests. AG 8(b) applies.

¹⁷ ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

¹⁸ ISCR Case No. 06-25928 at 4 (App. Bd. Apr. 9, 2008), with citations as follows: Directive ¶ E2.8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006.) (Applicant's work as an interpreter in Afghanistan occurred “in the context of dangerous, high-risk circumstances in which [he] made a significant contribution to the national security.”) See *also* ISCR Case No. 04-12363 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 (App. Bd. Feb. 5, 2008)

Guideline C, Foreign Preference

The security concern under Guideline C, AG ¶ 9, is that

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The SOR alleges under Guideline C that Applicant has shown a preference for Afghanistan over the United States because he has lived primarily in Afghanistan since 2005, even when he was not employed. This conduct does not relate to the specific disqualifying conditions under AG ¶ 10, but to the general Guideline C Concern.

The evidence does not show that Applicant indicated a preference for Afghanistan over the United States. He chose to come to the United States more than 30 years ago, in 1981. When his Afghan passport expired in 1982, he chose not to renew it. He chose to become a U.S. citizen in 1989. He lived and resided in the United States initially working as a mechanic. He then started his own business here, which he operated for 12 years. His lack of property in the United States does not indicate preference for either country, because he does not own property in either country. His choice of residence has depended on the location of his employment.

After he sold his business in 2004, he was unemployed for an extensive period, living on savings and his profit from the sale. After he married in December 2005, he returned to the United States to seek work. He obtained employment with a U.S. contractor that involved working in Afghanistan, and he traveled back to Afghanistan in May 2006. After that job ended six months later, he returned to the United States to seek work. Between January and October 2007, he spent several months in each location, seeking employment. He obtained work for U.S. forces in Afghanistan from late 2007 to early 2008. After three months unemployment, he again returned to the United States to seek work. He found a job with his current U.S. employer in May 2008, and it involved his returning to Afghanistan. He has lived where he works since then. I conclude that Applicant's residence has been determined by his employment. He has lived in Afghanistan since 2008, because that is where he works to provide service to U.S. forces. Between 2005 and 2008, Applicant traveled back and forth between the United States and Afghanistan in search of work. For almost 25 years before that, he lived where he worked, in the United States. I find that Applicant has not indicated a preference for Afghanistan over the United States under Guideline C.

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

The SOR lists \$16,594 in delinquent debts, and Applicant admits all but a disputed debt of \$880. He filed a Chapter 13 bankruptcy petition in 2002. He failed to timely pay his federal taxes for three tax years. The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*).

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

(b) 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;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The most significant delinquencies in the SOR are the three federal tax liens, which total almost \$13,000. The 2002 and 2003 liens stem from unpaid business taxes; the 2006 lien relates to unpaid personal income taxes. Applicant stated he had insufficient funds to pay the taxes, and that the IRS granted him time to pay them after he found employment. AG ¶ 20(b) applies to the extent that Applicant had limited funds because of unemployment between 2004 and 2006, and intermittent employment from 2006 to 2008. For full mitigation, an applicant is required to act reasonably under the circumstances. He acted reasonably by keeping the IRS informed of his status. However, Applicant has been employed full time since 2008. His salary has increased from \$20,000 to \$80,000, and he has amassed substantial savings in that time. He was

aware since completing his security clearance application in mid-2009 that his tax debts were a security concern, yet he did not pay his delinquent tax debts until December 2011. He paid the IRS a lump sum of almost \$22,000 about three months before his security clearance hearing. His statement that he waited to pay it because he did not know how to pay online is not credible. Only partial mitigation is available under AG ¶ 20(b).

AG ¶ 20(d) requires a good-faith effort to resolve debts. The Appeal Board has defined “good-faith” as conduct showing “reasonableness, prudence, honesty, and adherence to duty or obligation. Such standards are consistent with the level of conduct that must be expected of persons granted a security clearance.”¹⁹ Applicant did not make a good-faith effort to pay his legitimate federal taxes because he waited to do so until he was forced by the security clearance process. AG ¶ 20(d) does not apply.

Applicant completed an online financial course in 2012, which was required as part of the Chapter 13 bankruptcy petition. His two smaller SOR debts are unresolved. However, the 1996 debt of \$880 is 16 years old, and the telephone debt, which he disputes, does not appear on his current credit report. In addition, the two debts total about \$3,600 which, in light of Applicant's assets of almost \$130,000, are not security-significant. The federal tax liens represent the largest part of the SOR debts, and he resolved those debts. Applicant's financial situation is under control, and AG ¶ 20 (c) applies.

Applicant disputes the two unresolved debts. He believes the amount he owes for overseas telephone calls (allegation 3.e) should be \$455 instead of \$2,733. He also does not recognize the debt listed at allegation 3.f for \$880. However, he did not provide documentation showing he has contacted the credit reporting agencies to formally dispute these debts. He receives only partial mitigation under AG ¶ 20(e).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

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.

The Guideline E allegations implicate the following disqualifying conditions under AG ¶ 16:

¹⁹ ISCR Case No. 99-0201 at 3 (App. Bd. Oct. 12, 1999)

(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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

The evidence shows that Applicant had difficult relations during his employment at X, and his employers were not satisfied with his performance. Applicant was well aware of it, and had numerous complaints of his own about the situation. The manager at X had concerns about security issues raised by Applicant's conduct. Applicant had ample information from which to know he was terminated: he was told to "stand down," his CAC card was taken, and he was ordered off the base. He notes in his own statement that one (unidentified) person told him he had been fired, and he was specifically told by a W manager, "You are dismissed from your job." However, Applicant failed to inform the government that he had been terminated from his position with X and W when he completed his security clearance application in July 2009. He contends he left only because his contract had ended. He answered "No" to Question 13(c)(1), which asked if, within the previous seven years, he had been fired, left a job under unfavorable circumstances, or been laid off. Even if Applicant did not realize he had been terminated, he knew the circumstances were unfavorable when he left W's employment. He also answered "No" to question 13(c)(2), which asked if he had been disciplined for misconduct, and question 13(c)(3), which asked if he had been disciplined for security issues. He also stated in his October 2009 affidavit that he was

not involuntarily terminated, released from his duties, or counseled. At the hearing he continued to maintain that he was not fired. AG ¶ 16(a) applies.

According to W and X, Applicant's conduct at times while he worked for coalition partner X was inappropriate. He acted in a belligerent manner toward a female NCO; continually complained about work assignments and that he was unfairly assigned long hours or bad shifts; failed to follow instructions regarding how to resolve complaints; was counseled and moved to various work areas because of personnel issues; and made complaints that related to classified matters. Applicant also failed to follow his supervisor's orders by leaving the base on December 6 without being debriefed. AG ¶ 17(d)(2) applies.

Under AG ¶ 17, the following mitigating conditions are relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

The record contains no evidence that Applicant made an effort to correct his failure to disclose his termination on his security clearance application. He continued to state that he was never terminated when he completed his affidavit, during his security interview, and at the hearing. AG ¶ 17(a) does not apply to Applicant's falsification.

Applicant's infractions while working at X for W, occurred six years ago; however, they were not minor or insignificant. His supervisor took steps to ameliorate Applicant's personnel issues by moving him to various other work areas, but the situation did not improve. Some of his actions raised security concerns as well. X characterized Applicant's conduct as "inappropriate for a military environment," told him to stand down, and informed W that it did not wish to have Applicant work for X in the future. Applicant's conduct did not happen in unique circumstances, but during his daily work. His actions cast doubt on his judgment and reliability, and AG ¶ 17(c) does not apply.

Given the evidence showing Applicant's strong performance over the past four years, it is unlikely that a situation such as occurred in 2006 will recur. Several factors

likely combined to lead to personal conflicts during Applicant's employment by W. He was just beginning his career working in the rigors of a military environment, and his inexperience led him to act in a way that more seasoned military personnel deemed inappropriate. Since 2008, Applicant has worked for a defense contractor in Afghanistan, and the record includes no indication of personnel issues. He has learned from his experience with X and W. Moreover, he has done an outstanding job, based on the numerous character references from his current employer and military members who worked with him in the field. The issues that occurred in 2006 have not recurred, and are unlikely to recur in the future. I also conclude that Applicant did not state that he would talk to the Taliban and Al Qaida, based on the testimony of Applicant's witness, who worked with him in Afghanistan at the time, the letters of others who worked with him in the field, and Applicant's statement that he has supported U.S. forces by providing translations of Taliban conversations. AG ¶ 17(d) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant lives and works in Afghanistan. The risk of terrorist attacks is high, and safety and security are key issues. Terrorist groups such as al-Qaida and the Taliban target U.S. interests through violence, and disrupting and defeating them are key goals of the President. Residents of Afghanistan are subject to the dangers inherent in this situation. Applicant has lived in Afghanistan for the past four years, while he supported U.S. forces. However, Applicant's letters from co-workers, military members, and a government official repeatedly mention his willingness to protect U.S. personnel regardless of the danger to himself. The possibility of exploitation based on his family ties presents a concern, but as a former federal agent noted, Applicant's actions show

that he has chosen U.S. interests despite the danger to himself and his family. His actions in support of the United States outweigh the Guideline B concerns.

Security concerns remain under Guidelines F and E. Applicant failed to pay his legitimate federal taxes for 2002, 2003, and 2006. He failed to pay these debts despite earning a substantial salary over the past few years that allowed him to amass \$130,000 in savings. He resolved the liens in December 2011, but he did not take action until after he had received DOHA interrogatories in 2011, indicating that the resolution was likely in response to the security clearance process rather than a desire to meet his legitimate financial obligations. Applicant also demonstrated poor judgment when he failed to disclose his job termination on his security clearance application, at his security interview, in an affidavit he signed, and at his hearing.

A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised under the guidelines for financial considerations and personal conduct. Such doubts must be resolved in favor of the national security.

Formal Findings

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a – 1.j	FOR Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant
Subparagraph 2.b	Against Applicant
Subparagraph 2.c	Against Applicant
Subparagraph 2.d	For Applicant
Subparagraph 2.e	Against Applicant
Subparagraph 2.f	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a	For Applicant
Subparagraph 3.b	Against Applicant
Subparagraph 3.c	Against Applicant
Subparagraph 3.d	Against Applicant
Subparagraph 3.e	For Applicant
Subparagraph 3.f	For Applicant
Paragraph 4, Guideline C:	FOR APPLICANT
Subparagraph 4.a	For 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's access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge