



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



In the matter of:	)	
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	)	ISCR Case No. 10-07695
	)	
Applicant for Security Clearance	)	

**Appearances**

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

May 29, 2012

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On December 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective after September 1, 2006.

On December 26, 2011, Applicant replied to the SOR (RSOR) in writing, and she requested a decision based on a hearing before an Administrative Judge. I received the case assignment on February 27, 2012. DOHA issued a notice of hearing on February 29, 2012, and the hearing was convened on March 27, 2012. At the hearing, the Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A and B, which were also admitted without objection. One additional witness testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on April 9, 2012. I granted Applicant's request to keep the record open until April 6, 2012, to submit additional documents, and

the additional evidence that was received has been identified and entered into evidence without objection as Exhibits C and D. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts relating to the Republic of Afghanistan (Afghanistan). The request and the attached documents were admitted into evidence as Exhibit 5. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In her RSOR, Applicant admitted all of the SOR allegations, 1.a. through 1. c. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 53 years old. She has been married two times, and her second marriage ended in 2012. Applicant has two daughters. Applicant was born in Afghanistan in 1958 and moved with her younger daughter to the United States in 2001. Her older daughter had moved to the United States three years before she did. Applicant became a naturalized United States citizen in 2006. Applicant's father is deceased. Applicant also has two grandsons who live with Applicant and her daughter.

Applicant is solely a United States citizen and only has a United States passport. Applicant is not currently employed. She had previously worked as a linguist for the military in Afghanistan from 2009 to 2012, and she seeks a DoD security clearance in connection with future employment in the defense sector.

### **(Guideline B - Foreign Influence)**

The SOR lists three allegations regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. As stated above, in her RSOR, Applicant admitted all of the allegations listed:

1.a. Applicant's mother is a citizen and resident of Afghanistan. Applicant testified that her mother is more than 80 years old, and has never worked outside of the home. Applicant speaks to her mother once or twice a week. (Tr at 40, 42.)

1.b. Applicant has three brothers who are citizens and residents of Afghanistan. Applicant testified that her oldest brother, who is about 60, used to work as a clerk, but he is now retired. Her middle brother, around 40, is also retired. Her youngest brother owns a grocery store. She speaks to her brothers approximately once a month. (Tr at 41- 42.)

1.c. Applicant has two sisters who are citizens and residents of Afghanistan. Applicant testified that her older sister used to work as a clerk, but she is now retired. Her husband works for the United Nations. Her younger sister is also retired. Her husband is a doctor. She speaks to them one or two times a month. She last saw her relatives when she visited Afghanistan in 2008. (Tr at 42-48.)

In addition to Applicant's two daughters and two grandsons in the United States, she also has a cousin and a nephew in the United States. Applicant testified that she purchased a house in the United States. (Tr at 52-54.) Exhibit C establishes that Applicant purchased the home on September 12, 2011, for the amount of \$515,259. Exhibit D shows the principal balance to be \$373,841.72. Applicant has no property in Afghanistan.

### **Mitigation**

Applicant's nephew testified on behalf of Applicant. He is 30 years of age, and he was born in Afghanistan. He came to the United States in November 2008. In June 2009, he became an interpreter for the United States. He testified that Applicant is like a mother to him when he is in the United States, and all of Applicant's family is very supportive. (Tr at 70-74.)

Applicant also submitted four Certificates of Appreciation and Achievement that she received during her employment as a linguist for the United States. (Exhibit A.) Finally, Applicant submitted a Record of Final Written Warning, which indicated that Applicant was receiving a final warning because she was unable to understand some of the questions given to her when she was undertaking a polygraph exam. (Exhibit B.) Applicant testified that she was terminated because she did not understand some of the polygrapher's questions. (Tr at 66.)

### **Current Status of Afghanistan**

Afghanistan has been an independent nation since August 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, and the Soviets withdrew in 1989. After the withdrawal a civil war continued, and in the mid 1990s the Taliban rose to power. The Taliban committed massive human rights violations and provided sanctuary to Osama Bin-Laden and Al Quaida. After the September 11, 2001 terrorist attacks the United States forces and a coalition commenced military operations in October 2001, and forced the Taliban out of power and a new democratic government was installed in 2004.

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly frequent, sophisticated, and destabilizing. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

## Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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 as to obtaining 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. Those that could be applicable in this case include the following: 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.” Applicant’s family, who are citizens and residents of Afghanistan, makes AG ¶ 7(a) a concern to the Government. I find that 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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information,” is also applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 8(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,” is applicable to this Applicant and controlling for the following reasons:

Applicant, her two daughters and her two grandsons, are all residents and citizens of the United States. Applicant purchased a home in the United States, and she has no property outside of the United States. None of her relatives in Afghanistan work for the Government of Afghanistan, and her contact with her brothers and sisters is fairly infrequent. Finally, Applicant testified rather passionately and credibly that she is devoted to the United States as the home of her children and her grandchildren. Based on all of these reasons, I conclude Guideline B for Applicant.

