



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 10-09550
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

04/26/2012

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On October 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On November 11, 2011, Applicant responded to the SOR, admitted two of the three allegations raised, and requested a decision without hearing.<sup>1</sup> On December 16, 2011, Department Counsel submitted a File of Relevant Material (FORM), which included six attached items. Applicant did not timely respond to the FORM. The case was assigned to me on April 17, 2012. Based on a review of the case file, I find Applicant met his burden regarding the security concerns raised under Guideline B. Security clearance is granted.

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<sup>1</sup> Applicant admitted SOR allegations ¶¶ 1.a-1.b. He admitted in part and denied in part the allegation at ¶ 1.c.

## **Administrative Notice**

In the FORM, the Government requested I take administrative notice of certain facts relating to Afghanistan. The facts are summarized at pages one through four of the request, and supported by six documents pertaining to Afghanistan (FORM Appendix). The documents are included to provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports in the request for administrative notice. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out below and adopted as factual findings.

Afghanistan is a country in Southwestern Asia. It is 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 2006, the population was about 31 million people with about three million Afghans living outside Afghanistan.

Afghanistan is presently an Islamic Republic with a democratically elected president. Afghanistan 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% 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-jacking, assaults, or hostage taking. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing.

## **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a-1.b. Specifically, he admitted that his brother and sister are citizens and residents of Afghanistan. In response to SOR allegation ¶ 1.c, Applicant admitted that his nephew is a citizen and resident of Afghanistan, but denied specific knowledge that his nephew works for a high ranking Afghani official. Instead, he suggested that his nephew might be a member of the Afghani media. These answers are incorporated herein.

Applicant is a 66-year-old translator working for a defense contractor. He was born in Afghanistan, where he received a college education in the mid-1980s.

Applicant came to the United States in 1991 and became a U.S. citizen in 1999. He has worked for the same employer since 2008. He is married and has no children.<sup>2</sup>

Applicant has a 77-year-old brother, a retired teacher, who is a citizen and resident of Afghanistan. Applicant and his brother have not had contact since a dispute in 1998 over some family real estate. Applicant's brother does not know of Applicant's current whereabouts. Applicant also has a 77-year-old sister, who is a housewife. She and Applicant used to speak by telephone about twice a year, but she stopped calling Applicant in 2009. Their contact had been dependent on her calling him. She is also unaware of Applicant's current place of residence.

In addition, Applicant has a nephew who is a citizen and resident of Afghanistan. His nephew either works for a high ranking Afghani official or is a politically connected member of the Afghani media.<sup>3</sup> Applicant spoke to his nephew on one occasion, when the nephew visited the United States with an Afghani official in the mid-2000s. The nephew does not know where Applicant lives. Like Applicant's brother, this nephew last had contact with Applicant before he started his current work.

Since arriving in the United States, Applicant has only visited Afghanistan as a tourist once, in the early 2000s. He is aware of the domestic situation in that country. Applicant does not consider himself to be a dual-national. He has lived in the same home since 2006. Applicant maintains a U.S. passport. He declares his full loyalty to the United States, where he has been settled for over two decades. His current work as a translator and Afghani cultural expert significantly and uniquely aids U.S. efforts in that area. He has never discussed his current work with anyone, including his wife.<sup>4</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are required 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the whole-person concept. All available, reliable information about the

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<sup>2</sup> The FORM and Applicant's 2008 security clearance application (FORM, Item 4) note that Applicant is single. However, in his 2011 Response to Interrogatories (FORM, Item 5, at 2, 9), Applicant wrote that he was married in 2008.

<sup>3</sup> FORM, Item 5, at 4, *but see* Answer to the SOR.

<sup>4</sup> FORM, Item 5, at 9.

person, past and present, favorable and unfavorable, must be and were considered 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 my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>5</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>6</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>8</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>9</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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<sup>5</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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

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

<sup>9</sup> Executive Order 10865 § 7.

Based upon consideration of the evidence, I find Guideline B (Foreign Influence) to be the most pertinent to the case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

## **Analysis**

### **Guideline B – Foreign Influence**

The concern under Guideline B is that 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. Consideration should be given to 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are discussed in the analysis below.

The country at issue is Afghanistan. Both the Taliban and Al-Qaida have an active presence in the country. The threat of terrorism and violence is pervasive. Consequently, given heightened security risks, close scrutiny is warranted.

The SOR notes Applicant's foreign contacts as his brother, sister, and nephew. In addition, Applicant's nephew appears to have a visible job connected with the Afghani political hierarchy. Such facts are sufficient to give rise to Foreign Influence Disqualifying Conditions 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 exploitation, inducement, manipulation, pressure, or coercion*) and AG ¶ 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information*). With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

Applicant's relationship with his elder brother ended after a disagreement in 1998. Applicant has not spoken to his sister since 2009. Their telephonic relationship previously relied on her initiating calls to him. While Applicant's nephew's connection with the Afghani political hierarchy raises serious security concerns, it is notable that the two only met once, in the mid-2000s, when the nephew was visiting the United States. They have not had subsequent contact. In contrast to his tenuous connections with his relatives abroad, Applicant has been a U.S. citizen and resident for over two decades.

He has only vacationed in Afghanistan once, about a decade ago. Time and limited contact has considerably diminished his familial ties. In addition, Applicant has resided in the same home since 2006, which he now shares with his wife of four years. He has maintained the same job as a translator and Afghani cultural expert since 2008. He considers the United States to be his only home. In light of these facts, Foreign Influence Mitigating Conditions AG ¶ 8(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.*), AG ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty to 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 AG ¶ 8(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*) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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, as well as the whole-person factors. Applicant is a mature and educated man who has served as a translator and cultural expert since 2008. His specialized knowledge of Afghani language, culture, and geography provide the United States with specialized skills. Applicant is aware of the dire circumstances and risks related to Afghanistan. He has been a U.S. citizen for over two decades. He thinks of the United States as his home. He and his wife live in their own house in the United States.

Applicant has been estranged from his brother in Afghanistan since the late 1990s. Even before his contact with his sister in Afghanistan ended in 2009, their contact was limited. Applicant's Afghani nephew has some position related to a member of the Afghani hierarchy or media, but Applicant is unclear as to what that position precisely is. This lack of knowledge and the fact that the two only met once, while the nephew was on a visit to the United States, highlight the lack of intimacy shared by the two. None of these relations know of Applicant's current whereabouts or work.

For all practical purposes, Applicant is volitionally estranged from his Afghani relatives. There is no evidence that he has tried to initiate or reinstate contact with his brother, sister, or nephew. He maintains no contact with them, and they no longer maintain contact with him. Applicant does not discuss his work with anyone, including his wife. He is aware of the risks associated with his former homeland, but perseveres in helping the United States, his adopted home for over two decades, in its efforts in that country. He presently has no significant ties to Afghanistan. Given the record as a whole, I find that Applicant met his burden. Clearance is granted.

### **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: FOR APPLICANT

Subparagraphs 1.a-1.c: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge