



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-01253
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace L. Garcia, Esquire, Department Counsel  
For Applicant: Bradford Weston III, Esquire

03/29/2013

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**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 17, 2009. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 6, 2012, 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on October 9, 2012, and he answered it on October 17, 2012. Applicant retained counsel and requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 28, 2013, and I received the case assignment on January 30, 2013. DOHA issued a Notice of Hearing on February 14, 2013, and I convened the hearing as scheduled on February 28, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE K, which were received and admitted into evidence without objection. The record closed on February 28, 2013. DOHA received the hearing transcript (Tr.) on March 14, 2013.

### **Procedural and Evidentiary Rulings**

#### **Notice**

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. After consulting with counsel, Applicant affirmatively waived this right under the directive. (Tr. 10.)

#### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts related to Afghanistan. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 38 years old, works as a linguist and cultural interpreter for a DOD contractor. He is fluent in Phestu, Dari, and English. He began working as an interpreter in 2008 for another DOD contractor. While working for his first DOD employer, Applicant served in Afghanistan for two years, beginning in October 2008. His job required him to translate documents and to participate in patrols with his team. He joined his team in approximately 250 patrols. His duties did not require a security clearance. His current employer is sponsoring him for a security clearance. Applicant

worked in Afghanistan from April 2011 until October 2012. He planned to return to Afghanistan after the hearing.<sup>1</sup>

Applicant was born and raised in Afghanistan. He left Afghanistan in 2001 to marry. He and his wife married in July 2001. They have a nine-year-old daughter, who was born in the United States and resides in the United States. Applicant's wife was born in Afghanistan and immigrated to the United States with her family in 1985. She has lived in the United States since then. She became a U.S. citizen in 2000. Applicant became a U.S. citizen in 2008. His wife does not work.<sup>2</sup>

Applicant's parents are citizens of Afghanistan and retired. Applicant's father immigrated to the United States in November 2012, based on Applicant's sponsorship. His father is a permanent resident with a green card and lives with Applicant and his family. His mother still resides in Afghanistan. His father is beginning the process to sponsor his mother for entry into the United States. Applicant estimates that she will arrive in the United States in six to eight months. Applicant has one brother, who lives in the United States with his wife and daughters. Applicant's 23-year-old brother is a citizen and resident of Afghanistan. He recently completed high school and plans to attend college in Afghanistan.<sup>3</sup> Applicant's three sisters are citizens and residents of Afghanistan. His sisters are not married and live with their mother. They are not employed and are homemakers. Applicant provides his family in Afghanistan \$200 a month for food. His wife's family lives in the United States.<sup>4</sup>

Applicant's father owns a house in Afghanistan, where Applicant's mother, brother, and three sisters live. Applicant estimates the value of the house at \$250,000. Once his family arrives in the United States, his father plans to sell the house and purchase a house in the United States. Applicant believes his father can sell the house through a real estate agent in the United States. There are no plans for his father to return to Afghanistan to sell the house.<sup>5</sup>

Applicant's Afghan family does not have any contacts with the Afghan government or military nor do they belong to any organizations. Before his retirement, Applicant's father worked for a private Afghan newspaper as an interpreter. All Applicant's assets are in the United States. Since his arrival in the United States, Applicant has not returned to Afghanistan on a personal visit. His only trips to Afghanistan have been on behalf of the U.S. Government. When he is in the United

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<sup>1</sup>GE 1; AE C; Tr. 22, 24-26, 35, 40-47.

<sup>2</sup>GE 1; GE 3; Tr. 22, 29, 55-56.

<sup>3</sup>When the Taliban controlled the Afghan government, members of Applicant's family could not attend school, which is the reason his brother just completed high school. Tr. 60-63.

<sup>4</sup>GE 1; GE 3; GE 4; AE A; Tr. 30-31, 33, 59-63, 70-71, 81-82.

<sup>5</sup>Tr. 32, 64-67.

States, Applicant calls his family, particularly his mother, once a month. They do not communicate by email nor does he send them gifts. Applicant has no intent to return to Afghanistan to live.<sup>6</sup>

When he is working in Afghanistan, Applicant does not contact his family. He lives on a military base. His family believes he is a truck driver, who drives all over the United States. However, his wife knows he is in Afghanistan. Since arriving in the United States, his father has learned that Applicant works in Afghanistan. His father will not tell his mother about his work as his father understands the risk to Applicant if he reveals this information. Applicant would give greater priority to his job and the United States if his family is taken hostage in Afghanistan. He would report any threats to his family to his command. Applicant does not claim dual citizenship with Afghanistan. His loyalty is to the United States because he swore allegiance to the United States when he became a citizen and because his wife and daughter are U.S. citizens.<sup>7</sup>

Applicant submitted seven letters of recommendation from his co-workers in Afghanistan and his military supervisors. In 2009, his co-workers praised his work and sought to upgrade his Category 1 linguist level to Category 2 linguist. He submitted an August 2011 recommendation from an Army captain, who praised his interpretation and work skills and who considered Applicant a welcome addition to their team. The three 2012 recommendations also praise his linguistic skills and work ethic. He recently received a Certificate of Appreciation from his commander for his outstanding performance in Afghanistan. He submitted an unsigned performance appraisal for 2009, which also indicates excellent performance.<sup>8</sup>

I take administrative notice of the following adjudicative facts. Afghanistan is an Islamic Republic and emerging democracy. With the support of the United States and other nations, its new government endeavors to build a new system of government and to rebuild the country's infrastructure. Its army and police force are well trained. It continues to face significant challenges from the insurgency and terrorist organizations supported by the ousted Taliban and Al Qa'ida. The Afghan government is not complacent about the terrorist threat or the insurgency; rather it actively seeks to eliminate both with the assistance of the United States and NATO. The new government is working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community, has signed a "Good Neighbor" declaration with six nations bordering it, and promotes regional cooperation. The United States supports the emergence of a broad-based government in Afghanistan. Sometime ago, the leaders of both countries concluded a strategic partnership agreement committing to a long-term relationship between both countries. Despite its differences with the United States, Afghanistan continues to seek

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<sup>6</sup>Tr. 34, 51-54, 63, 68-70, 75-76.

<sup>7</sup>Tr. 34-35,, 51-54, 71-81.

<sup>8</sup>AE B; AE D - AE K.

United States support as it moves towards democracy and stability. Afghanistan is not an active collector of intelligence information.

## **Policies**

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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:

(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

(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 wife and daughter are citizens and residents of the United States. His father is now a permanent U.S. resident, living in the United States. One brother and his family live in the United States. Thus, no security concern is raised by these family members. Applicant’s mother, brother, and three sisters are citizens and residents of Afghanistan. His mother, brother, and sisters do not work. Applicant maintains a normal familial relationship with his mother, brother, and sisters in Afghanistan. He talks with them by telephone once a month when he is in the United States, and he provides a small amount of financial support for his family members in Afghanistan. He has not visited his family in Afghanistan since moving to the United States, and takes care not to contact them when he is working in Afghanistan. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would

create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members who may be threatened by terrorists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his family, as well as the activities of the Government of Afghanistan and terrorist organizations within the country. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his family in Afghanistan raise a heightened risk and a security concern because of the activities of terrorist organizations in Afghanistan. The evidence of record fails to show that the Afghani government targets U.S. citizens in the United States or in Afghanistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Afghani government will seek classified information is moderate. The same cannot be said of the terrorist organizations.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Afghanistan cause security concerns, I considered that Afghanistan and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the Afghani government targets U.S. citizens for protected information, but the terrorist threat is real. The human rights issues continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family in Afghanistan. Applicant's contacts with his family raise a heightened risk under AG ¶¶ 7(a) and (d).

AG ¶ 8 provides conditions that could mitigate security concerns:

(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.; and

(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.

Applicant's family members in Afghanistan do not know that he works as an interpreter and linguist for the DOD. They think that he drives a truck all over the United States. He communicates with his family members by telephone once a month when

living in the United States. His communications with his family in Afghanistan are limited and create little likelihood for foreign influence or exploitation. His mother, brother, and sisters do not work and do not have any contact with government officials. It is unlikely that the Government of Afghanistan would target them to pressure Applicant for classified information, and thus, Applicant would not be placed in a position of having to choose between the interests of Afghanistan and the interests of the United States. Applicant stated that he would place the interests of the United States over his family should they be targeted by terrorists or others who seek to obtain classified information from him. Outside of his family, his ties to Afghanistan are nonexistent as Applicant does not own property, bank accounts, or other assets in Afghanistan. He does not receive any benefits from Afghanistan. His contacts in Afghanistan do not show that he would chose the interests of Afghanistan over the interests of the United States. In reviewing all the evidence of record, there is little likelihood that Applicant's family in Afghanistan are a security risk. Applicant has mitigated the security concerns about his family in Afghanistan under AG ¶¶ 8(a) and 8(b).

### **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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating



conditions in light of all the facts and circumstances surrounding this case. Applicant was born and raised in Afghanistan. He left his homeland in 2001 to marry his wife, who is a U.S. citizen and resident. He continues to live with his wife and young daughter in the United States. After he became a U.S. citizen in 2008, he obtained employment as a linguist and interpreter with DOD contractors because he is fluent in Pashtu and Dari, Afghan languages. He does not claim dual citizenship with Afghanistan nor does he own property or hold assets in Afghanistan. His mother, brother, and three sisters still live in Afghanistan and are Afghani citizens. His father recently immigrated to the United States and is preparing to sponsor his mother for immigration to the United States. His family members do not have connections with the Afghani government. They live quietly. When he is working in Afghanistan, Applicant takes care not to contact his family members. He would report any threats to his family to his command. He is highly respected by the United States military for his linguistic skills and his work in Afghanistan for the United States. The United States is his home and his country. He would place the United States first if there are any threats to his family.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence under Guideline B.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge