



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



In the matter of: )  
)  
) ISCR Case No. 11-06080  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: ~~U^ a&c^ aD~~ Personal Representative

01/07/2013

**Decision**

WHITE, David M., Administrative Judge:

Applicant was born and raised in Afghanistan. He went to Pakistan as a refugee, then became a U.S. resident after marrying his first wife. His mother and three siblings are resident citizens of Afghanistan; he inherited part ownership of their family farm there; and his current wife's parents are Afghan citizens residing in Pakistan. He failed to mitigate resulting security concerns. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on January 19, 2010. On December 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on March 7, 2012, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 31, 2012, and the case was assigned to me on August 6, 2012. DOHA issued a Notice of Hearing on August 30, 2012, and I convened the hearing, as scheduled, on September 25, 2012. Department Counsel participated in the hearing via video teleconference. The Government offered exhibits (GE) 1 through 4, which were admitted without objection. The Government also offered hearing exhibits (HE) I and II, and administrative notice documents in support of the HE I and II requests that I take administrative notice of the facts contained therein concerning Afghanistan and Pakistan. Applicant had no objection to the request for administrative notice of the facts set forth in HE I and II, and I granted those requests. Applicant offered exhibits (AE) A through G, which were admitted subject to review and possible objection by Department Counsel. Applicant's wife and Applicant testified on his behalf. On September 26, 2012, after reviewing Applicant's exhibits, Department Counsel had no objection to their admission into evidence. DOHA received the transcript of the hearing (Tr.) on October 4, 2012.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor, where he has worked as an interpreter assisting U.S. forces in Afghanistan for about three years. He has never held a security clearance and has no military service. He completed high school in Afghanistan and has taken some English as a Second Language classes at a U.S. community college. He is married for the second time, and has three children ages 19, 5, and 3.<sup>1</sup> In his response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b through 1.f and 1.h. He denied those in SOR ¶¶ 1.a and 1.g.<sup>2</sup> Applicant's admissions, including those made in previous statements to security investigators,<sup>3</sup> are incorporated in the following findings.

Applicant was born and raised in Afghanistan. His father, who passed away in 1995, was a farmer. His mother did not work outside their home. Applicant went to Pakistan, as a refugee from the Russian invasion in 1982. In 1990 he married his first wife, who was an Afghani with U.S. permanent resident status and has since become a naturalized citizen. She sponsored him to immigrate to the United States in 1993. After a domestic violence incident and ongoing money problems, they divorced in 1995. He became a naturalized U.S. citizen on May 21, 2003, and married his current wife in an arranged marriage in Pakistan in September 2003. His second wife became a

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<sup>1</sup>GE 1; Tr. 41-42, 45.

<sup>2</sup>AR.

<sup>3</sup>GE 2 through 4. Although not previously adopted by Applicant, he specifically agreed to the accuracy and admissibility of his Personal Subject Interview after being advised that it would not be admitted if he chose to object to it. Tr. 29-33.

naturalized U.S. citizen in February 2010 and holds a current U.S. passport. His three children were all born in the United States.<sup>4</sup>

Applicant's mother, who is in her late 70's, lives with one of his brothers on the farm in Afghanistan that Applicant's father left to his sons upon his death. Applicant gave various estimates ranging from \$250,000 to \$600,000 concerning the value of this property, primarily due to his poor facility with the English language. During the hearing, his wife explained that his stated and admitted valuation of \$600,000 was intended to be 600,000 Afghani, which at current exchange rates would be less than \$12,000. She also said something about it possibly being sold, but that was not clear particularly since she said Applicant's mother and brother still live there. The farm is apparently not very profitable, and the brother who lives there also owns and operates a shop. Until he began working with the U.S. military as an interpreter in January 2010, he had telephonic contact with these family members about once per week. He was not permitted to contact them while working in Afghanistan.<sup>5</sup>

Applicant has a sister and another brother who are also resident citizens of Afghanistan. His sister has been a widow for about 12 years, and never worked outside her home. The brother studied to become a teacher, but most recently has worked for the United Nations as a driver. Applicant also has three Afghani sisters-in-law who reside in that country. One is the widow of one of his brothers who was a teacher and died in 2000. The other two are married to the brothers described above. None of them worked outside their homes either. Applicant's former brother-in-law, who remains a friend and is his first wife's brother, previously worked for the Afghan government in the Ministry of Health. He no longer works for the government.<sup>6</sup>

Applicant has two other brothers who retain their Afghani citizenship but live in Sweden. One of them works as a taxi driver and the other is a hospital nurse. Although Applicant admitted the allegation in his response to the SOR, there is no record evidence to support the SOR ¶ 1.e allegation that he has a sister residing in Pakistan. Applicant's mother-in-law and father-in-law are both Afghan citizens who are longtime residents in Pakistan. Three of his wife's brothers and one of her sisters also live there with their parents. Applicant has another sister-in-law who is a U.S. citizen and works with the Department of Defense overseas. She also has two brothers who reside in Great Britain. Applicant and his wife have regular contact with their family members, except that Applicant contacts only his wife during periods he is deployed to Afghanistan working with U.S. forces. Except for a visit to his brothers in Sweden from December 2006 to January 2007, the last time Applicant saw any of his family members in person was in Pakistan during summer 2003 when he and his wife were married.<sup>7</sup>

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<sup>4</sup>GE 1; GE 2; GE 4; Tr. 43-47, 81-83.

<sup>5</sup>AR; GE 1; GE 2; GE 3; GE 4; Tr. 60-70.

<sup>6</sup>AR; GE 1; GE 3; GE 4; Tr. 68-69.

<sup>7</sup>AR; GE 1; GE 3; GE 4; Tr. 44, 48-60, 65-67, 69-71, 75-78.

From the time he immigrated to the U.S. in 1993 until he obtained his current employment in January 2010, Applicant was unemployed and lived off public assistance. He and his wife rent their home, and own no property in the U.S. His wife does not work outside their home.<sup>8</sup>

Applicant's program manager wrote him a letter thanking him for "the tremendous service [he had] provided to our U.S. Troops in Afghanistan," and complimenting his loyalty and dedication to mission accomplishment. He also received a Certificate of Achievement recognizing his completion of 730 days in theater, excellent performance, and dedication to the Operation Enduring Freedom mission in Afghanistan.<sup>9</sup> Commanding officers and company first sergeants from four different Marine units for whom Applicant served as a linguist/interpreter provided letters of recommendation and certificates of appreciation or commendation. They described his loyal and courageous professionalism and effective service during daily interactions with local officials and more than 600 combat patrols. While they did not comment on his eligibility or suitability for a security clearance, they were highly complimentary of his character and work, and recommended him for further service supporting the U.S. armed forces.<sup>10</sup>

I took administrative notice of the facts set forth in HE I and HE II concerning the Islamic Republics of Afghanistan and Pakistan, which are incorporated herein by reference. Of particular significance are the poor human rights situation; and the active and hostile presence of Al Qaida, Taliban, and other extremist groups that generate instability and openly attack police and military forces of the respective governments, as well as U.S. persons and interests.

### **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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

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<sup>8</sup>GE 1; GE 3; Tr. 72, 79-81.

<sup>9</sup>AE A.

<sup>10</sup>AE B through AE G.

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 the 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, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **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. Department Counsel argued that substantial evidence in this case established two of them:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.<sup>11</sup>

After considering the SOR allegations and the record evidence, I find that two additional DCs under AG ¶¶ 7 are raised in this case:

(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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Both Afghanistan and Pakistan have significant internal anti-western terrorism threats that operate openly contrary to U.S. interests. Accordingly, family and property connections there have more potential to generate heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a), (d), and (e), than would similar connections in many other countries. For example, I find no substantial evidence in the record to support security concerns arising from Applicant's relationship with his two brothers who are permanent residents of Sweden despite their ongoing Afghan citizenship.

Applicant's mother, sister, and two brothers, with whom he maintains regular communication and familial relationships, are resident citizens of Afghanistan. He has lesser relationships with his three sisters-in-law and his former brother-in-law who are also resident citizens there. He and his four surviving brothers inherited ownership of the family farm on which they were raised, and where his mother and one brother's family still live. I find that, regardless of Applicant's confused valuation of this property, it is of significant importance to him as his family home. Applicant shares living quarters with his wife, whose parents are Afghan citizens and reside in an area of Pakistan identified in HE II as particularly susceptible to militant, insurgent, and terrorist presence and activity. He has an entirely legitimate, serious interest in the welfare of her family members in Pakistan, as well as his own family in Afghanistan.

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<sup>11</sup>Tr. 85.

These facts meet the Government's burden of production by raising all four of the aforementioned disqualifying conditions. Applicant's contacts, relationships, and connections with Afghanistan and Pakistan through his relatives residing there shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), (d), and (e) security concerns are:

(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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used to effectively influence, manipulate, or pressure the individual.

Considered in light of the substantial anti-western terrorism threat and impending departure of most NATO military forces from the region, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the U.S. due to his family ties there. Even though he has not personally visited Pakistan or seen his Afghan family members since his wedding in 2003, he has close relationships with them, and a strong interest in protecting his mother, brothers and sister, and his wife's family who are residents or citizens of those two countries. His communication and contact with his Afghani and Pakistan-resident family members since he came to the U.S. are neither casual nor infrequent. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and (c), except with respect to his two brothers in Sweden and the siblings-in-law alleged in SOR ¶¶ 1.d and 1.g.

The evidence also fails to establish significant mitigation under AG ¶ 8(b). Applicant has no assets in the United States, and lived off public assistance for the first 17 years that he lived here. He finally obtained employment and served effectively as a contract linguist/interpreter for several U.S. Marine Corps combat units, but did not

establish that he sought or accepted that lucrative employment for reasons, or endured life-threatening conditions, which would sufficiently demonstrate deep or longstanding U.S. relationships or loyalties under Appeal Board precedent. Finally, regardless of the confused state of the evidence concerning the monetary value of Applicant's interest in his family's farm in Afghanistan, it is his only property and the family home where his mother still lives. Accordingly, it retains the potential to support a conflict of interest and could be used for manipulation or pressure. AG ¶ 8(f) does not 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's conduct is not in question here. He is a mature and experienced individual, who has acted responsibly and provided valuable service to U.S. military forces deployed in combat. However, the inherent potential for pressure, coercion, exploitation, or duress from the presence of Applicant's family members and property in Afghanistan, and his wife's family in Pakistan, remains unmitigated. Placing Applicant in a position wherein it is foreseeable that he could be forced to choose between the security interests of the United States and the interests of his or his wife's family is the harm to be avoided under Appeal Board precedent. He failed to show that such potential is diminished to any reasonable extent. His loyal and dedicated service in support of Marine units in Afghanistan is highly commendable, but does not justify placing him or his relatives at risk of exploitation due to his access to classified information.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from foreign influence considerations.



## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge