DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-06104
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: Ernest Mitchell Martzen, Esquire

01/31/2013

Decision

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 May 18, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 21, 2012, detailing security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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, and he answered it on August 7, 2012. Applicant retained counsel and requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA), which DOHA received on August 13, 2012. Department Counsel was prepared to proceed on October 4, 2012, and I received the case assignment on October 15, 2012. DOHA issued a Notice of Hearing on October 26, 2012, and I convened the hearing as scheduled on November 15, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 8, which were received and admitted into evidence without objection. Applicant and one witness testified. He submitted exhibits (AE) marked as AE A through AE G and AE K, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 27, 2012. At the request of Applicant and his counsel, I held the record open until December 14, 2012, for Applicant to submit additional matters. Through counsel, Applicant timely requested additional time to submit the further documentation. On December 18, 2012, I issued an order, granting Applicant until January 15, 2013 to submit additional information. Applicant timely submitted a motion to consider his submissions. The Government responded to the motion and did not object to the submission of AE L - AE P, which were received and admitted.[1] The Government objected to the admission AE Q and AE R.[2] The record closed on January 15, 2013.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time, and place of his hearing on November 7, 2012, less than 15 days before the hearing. At the hearing, I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Through his counsel, Applicant affirmatively waived his right to the 15-day notice of the date, time, and place of the hearing. (Tr. 9)

Evidentiary ruling

Applicant offered ten documents tabbed as 1 to 10. The documents were marked as AE A through AE J. After a review of all documents and discussion of objections to some of the documents, AE A through AE G were admitted as evidence. AE H and AE I were admitted for administrative notice only. AE J was a motion to hold the record open, not a substantive evidentiary exhibit. At the close of the hearing, Applicant's counsel submitted AE K as evidence in support of its motion to hold the record open.

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[1]AE L is a letter dated January 10, 2013 from the Drug Enforcement Agency (1 Page); AE M is a copy of the court record from State A (7 pages); AE N is a copy of the first page of Applicant's tax returns for the years 2000-2003 (4 pages); AE O is a copy of Applicant's 2002 W-2 (1 page); and AE P is a copy of a lease in State B in 2002 (6 pages).

[2]AE Q is an affidavit signed by Applicant, and AE R is an affidavit signed by Ms. A, Applicant's close female and roommate.

The Government objects to the admission of the two affidavits (AE Q and AE R) on the grounds the Government did not have an opportunity to cross-examine the affiants on the information contained in their affidavits. Department counsel extensively cross-examined Applicant at the hearing concerning his receipt of the court documents in question and his residency in 2002. This objection is overruled. The information contained in the second affidavit supports information contained in AE P. The objection to this document is overruled, and the document will be assigned weight as determined appropriate.

Post-hearing, Applicant's counsel submitted a copy of State A's service of process rule and a case discussing State A's service of process for a defendant in a civil action who resides in another state. Applicant, in his motion for admission of these documents, argues that if he is the true defendant, then the summons and court papers should have been served under this rule. These documents have been marked as Hearing Exhibit 2. The Government objects to these documents, arguing that the documents misstate the law of State A on service of process because Applicant was a resident of State A and properly served the summons and court papers under State A's service of process rules for residents of State A. Applicant's submission is not a misstatement of the law. These documents present State A's rules and law on service of process on a nonresident defendant, which Applicant argues he is, if he is the proper defendant. Hearing Exhibit 2 is accepted. The Government also submitted additional information concerning State A's service of process rules for state residents, which is marked as Hearing Exhibit 3. Applicant's motion to consider additional documents is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Afghanistan. The request and the brief outlining the Government's position on the security risks associated with Afghanistan 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.

I take administrative notice of the following general facts related to the financial issues in this case. Under the laws of State A, Art. 2 §211(b), "A money judgment is presumed to be paid and satisfied after the expiration of twenty years from the time when the party recovering it was first entitled to enforce it . . . "[3] 15 USCS § 1681c (a) discusses information which is to be excluded from consumer reports. More specifically, 15 USCS § 1681c(a)(2) excludes "Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statue of limitations has expired, whichever is the longer period."[4] State A, Art. 3, § 308

[3]AE I.

[4]AE H.

provides the rules for personal service of a summons upon a resident within the state by delivery to the person to be served (§ 308.1.) or by delivering the summons to a person of suitable age and discretion at the usual place of abode or business and by either mailing the summons by first class mail to the named defendant last known residence or usual place of business without indicating on the outside that the mailing was from an attorney and marking the envelop "personal and confidential" (§ 308.2.). Section 308.2 required the two mailings to be done within 20 days of each other and for proof of service to be filed within 10 days.[5] State A, Art. 3, § 313 provides for service of process on an out-of-state resident. In particular, this section of the civil practice rules requires that service be perfected in the same manner as service must be perfected within the state. The person serving a summons must be authorized in the state where a defendant resides to serve process. In the case submitted by Applicant's counsel, the court in State A noted that numerous authorities hold that personal delivery of a summons to the wrong person does not constitute valid personal service even though the summons shortly comes into the possession of the party to be served.[6]

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.c of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 2.a and 2.b of the SOR.[7] 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 additional findings of fact.

Applicant, who is 55 years old, works as a linguist and cultural advisor for a Department of Defense contractor. He began his current employment in March 2010 and served as a linguist and cultural advisor in Afghanistan from April 2010 until December 2010. His employer hired him as a Category I interpreter, meaning he had no access to classified information. He previously worked in Afghanistan from August 2005 until July 2006 as a Category II interpreter, meaning he was an American citizen with an interim clearance who could do classified work. During this employment, Applicant worked with American soldiers in the spring offensive. A senior intelligence officer and a brigade communications officer wrote letters of recommendation, praising Applicant's

[5]HE 3.

[6]HE 2.

[7]When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." *See* ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

skills as a linguist and liaison with the Afghan National Security Forces. They stated that Applicant has an outstanding attitude and is highly motivated to accomplish the brigade's mission. Applicant speaks Farsi, Dari, Pashto, and English.[8]

Foreign Influence

Applicant was born and raised in Afghanistan. His father had three wives. Applicant, his siblings, his stepsiblings, and his father's wives all lived together when he grew up. Applicant's three brothers live in Afghanistan. He has two stepbrothers, who live in Afghanistan; one stepbrother, who is a citizen and resident of Canada; and one stepsister, who is a citizen and resident of the United Kingdom. He has five sisters-in-law, who live in Afghanistan. His father, mother, two stepmothers, one brother, one sister, and one stepsister are deceased.[9]

In 1977, the Taraki communist government began ruling Afghanistan. Life in Afghanistan became more difficult. This government killed an uncle. In 1981, Russia invaded Afghanistan, and life became much harder. The Russians arrested and interrogated one brother, uncles, and cousins, keeping them in jail for several months. The Russians killed an uncle and one cousin. In 1981, his immediate family members fled Afghanistan. During this time, Applicant worked at a family-owned motel, which eventually shut down. A 70-year-old Afghan man watched the building for him and his family. The Russians came looking for Applicant two or three times, but he was not at the building. On their last visit, the Russians told the 70-year-old man that if Applicant was not at the building when they returned, they would kill the old man. Applicant was not at the building when the Russians returned, and they killed the 70-year-old man. After this incident, Applicant fled Afghanistan and came to the United States. His siblings, who left Afghanistan during this time, later returned to live in Afghanistan.[10]

Applicant arrived in the United States without a valid visa or proper immigration status. He applied for political asylum. Initially, the United States Immigration and Nationalization Services (INS), now called the United States Citizenship and Immigration Services (CIS), placed Applicant in detention. After 70 days, Applicant was allowed to work while his status was pending. The INS conducted a hearing on his asylum request in 1984. INS denied his request, and in 1985, INS ordered him deported. Along with many other immigrants ordered deported, Applicant was flown to several countries around the world, but was not accepted by any country. He returned to the United States, where he was released on parole and allowed to work. Under a program instituted by President Reagan, Applicant was granted amnesty, because he had been a resident of the United States since 1981, and was given his green card. He became a U.S. citizen in June 1996. He lived in State A until 1998, when he moved to

[8]GE 1; AE A; AE D; AE E; Tr. 56-59.

[9]GE 1; Tr. 50-54.

[10]Tr. 40-41, 82-86.

State B, where he now lives. Applicant is not married, but he lives with Ms. A, a close female friend, who is a citizen and resident of the United States. He does not have any children.[11]

Applicant does not know the addresses for his stepbrother in Canada and his stepsister in the United Kingdom. He has not had any contact with his stepbrother in Canada for several years. Likewise, he has not had contact with two of his brothers since 2006 or earlier. He talks with one stepbrother every few years. One of his two stepbrothers called him in 2006 and asked for $500. Applicant refused to send him the money, and this stepbrother stopped talking with him. He does have telephone contact with his youngest brother around various holidays. Applicant does not talk with his sisters-in-law. Should he speak by telephone to any of his brothers, he does not speak to his sisters-in-law, as is the custom in his family. He will ask about the family, but he does not make a specific inquiry about his sisters-in-law, as such an inquiry is not acceptable in his family. Applicant's family was not aware that he was in Afghanistan in 2010. He did call his youngest brother when his work site was attacked, and the attack was on the news. Before his first trip to Afghanistan in 2005, Applicant called his youngest brother and asked if he would be harmed by his working as an interpreter. His brother advised him that no one bothers their family. Applicant last visited Afghanistan in 2003 without being sponsored by his employer. He did see his family members on this trip. His youngest brother is aware that he traveled to Afghanistan to work for the U.S. Army.[12]

In 2005 and 2010, Applicant worked as a cultural advisor and interpreter. His duties involved work on U.S. contracts, including determining which Afghan nationals would be awarded contracts. As is the custom in Afghanistan, Afghans seeking to get the contract work offered him bribes, as much as $100,000. He did not accept the bribes. Money would be left as a gift. He took this money to his commander. He reported these problems and the lack of honesty of these individuals to his superiors. Applicant also performed confidential work for the United States Drug Enforcement Agency, which the Agency declined to confirm or deny.[13]

The division executive officer and senior medical person for his unit testified on behalf of Applicant. He worked with Applicant beginning in the summer of 2005. Because Applicant was a Category II interpreter, Applicant was exposed to classified information. Applicant never compromised the classified information. The witness stated that Applicant had great skills as an interpreter and cultural advisor because they worked in the province where Applicant was raised. Applicant's language skills were important strategically to the mission and played an important role in the interrogation of detainees during the spring offensive. Not only did Applicant speak three languages and

[11]GE 1; Tr. 41-48.

[12]GE 1; Tr. 54-56.

[13]AE K ; AE L; Tr. 72-75, 77.

a regional dialect, he read the local newspapers and provided information to the Army about what was being written in the papers. The witness is aware that Applicant had one brother in Afghanistan. He never met Applicant's brother. The witness also verified that twice contractors gave Applicant money, which Applicant brought to him. Eventually, the money was returned to the Army finance department at the instruction of the legal department. The witness also provided a written statement. He recommended Applicant for a security clearance.[14]

I take administrative notice of the following adjudicative facts. Afghanistan is an Islamic Republic and emerging democracy. With the support of the U.S. 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 U.S. 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 U.S. 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 U.S., Afghanistan continues to seek U.S. support as it moves towards democracy and stability. Afghanistan is not an active collector of intelligence information.

Financial

With two exceptions, the credit reports of record reflect that Applicant pays his bills. The SOR alleges that Applicant owes two debts, totaling $13,476. SOR ¶ 2.a concerns a $904 medical bill. Applicant injured his arm while driving a truck in 2007. He received medical treatment at a clinic for this injury. He understood from his employer's representative that his medical treatment costs would be paid under its workers' compensation insurance. Applicant recently hired an attorney to verify that this bill was covered by workers' compensation. The attorney requested a determination on whether payment had been made or should be made and the appropriate notification to the credit reporting companies. If insurance does not pay the bill, Applicant stated that he would pay it. The February 2012 and the June 2012 credit reports show that Applicant disputed this debt with the credit reporting agencies.[15]

The two October 2005 credit reports show that an action for judgment against Applicant in the amount of $12,572 was filed in September 2002 by the creditor in SOR

[14]AE B; Tr. 104-120.

[15]GE 5 - GE 8; AE F; Tr. 64-72.

allegation 2.b, which is a collection company for the original creditor.[16] A more detailed web document indicates a filing date of April 25, 2002 and a disposition date of June 2, 2007, without further explanation. The plaintiff is the collection agency in SOR ¶ 2.b, and the defendant is identified as an individual with the same first and last name as Applicant and with the notation "aka" showing Applicant's first name, a middle name (which is American, not Afghani), and Applicant's last name. Neither the first or second page of this document show a court date or an amount of judgment. The 2005 credit reports show disposition as unknown. Applicant provided a copy of his passport, commercial driver's license, Social Security card, and U.S. passport card. Each of these documents contain a first name and last name for Applicant. No middle name is listed. On his SF 86, Applicant entered a first and last name and "NMN" for a middle name. He denied having a middle name, and specifically, the middle name listed in the court document. His first and last name are very common Afghan names, like "John Smith" is in the United States.[17]

When he learned about the judgment, Applicant called the court and credit reporting companies. He did not obtain a copy of the court record. He did deny receiving any information from a creditor about this debt or the judgment. Applicant is not aware of court procedures and did not receive any notice of a hearing. Because he called the credit reporting agencies and the judgment is not listed on any recent credit reports, he assumed that the debt had been resolved.[18]

Post-hearing, at my request, Applicant, through counsel, submitted documentation from the court about this judgment. The documentation reflects that the credit collection company, as the plaintiff, filed a lawsuit on April 9, 2002 against an individual, the defendant, with the same name as Applicant. In addition, the defendant in the lawsuit was listed with an "aka" name which included a middle name. The court issued a summons, which states that its venue is based on the fact the named defendant resides in County 1 of State A.[19]

In a sworn Affidavit of Facts for judgment, the credit collection company averred that it delivered a demand for payment to the defendant named in the lawsuit after receiving assignment of the debt from the original creditor. This sworn statement did not give an address, showing where it delivered the demand for payment or the date of

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[16]Applicant, through his counsel, provided a list of cases showing that judgments related to deceptive practices under the Fair Debt Collection Practices Act had been entered against the law offices which filed the case against Applicant. This information has limited relevance to the issues in this case. Applicant's counsel submitted a list of cases involving judgments against the credit collection company's attorney for deceptive practices. Given the minimal information contained in this document and the lack of a direct connection to the judgment case with Applicant's name, this document has little probative value in this case. AE G.

[17]GE 1; GE 2 - GE 5; Tr. 102-103.

[18]Tr. 61-63, 88-98.

[19]AE M.

delivery, although the signed statement avers that the defendant received, accepted and retained the letter without objection. A copy of the letter and documentation showing that the defendant actually received the letter is not attached to the affidavit.[20]

The court documents contain an affidavit of service, showing that a process server delivered the court papers to an individual named in the court papers on April 22, 2002 at an address in State A. In an affidavit in support of a default judgment based on the named defendant's failure to answer the complaint, an associate attorney, in the office of the credit collection company's attorney, stated a copy of the summons and verified complaint was mailed by first class postage through the U.S. Postal Service to the named defendant (with the "aka" name) at the named defendant's last known address on May 7, 2002, and that the papers had not been returned by the Postal Service. The affidavit appears to be in compliance with State A's rules of procedure for requesting a default judgment. The court entered a judgment by default on September 27, 2002.[21]

Applicant provided additional documentation to establish his residency in State B at the time this lawsuit was filed. Applicant provided a copy of the first page of his 2000, 2001, 2002, and 2003 federal tax returns and his 2002 W-2, which show his address in State B. He also provided a copy of a lease signed by Ms. A for this address. He is listed as a resident of the apartment on the lease. Ms. A, in signed, sworn statement, advised that Applicant has lived with her continuously since 1998 in State B, except when he took trips, such as to Afghanistan for the U.S. Army. She also stated that he lived continuously with her in 2002. Applicant submitted a signed and sworn statement, which advises that he has never been known with a middle name since arriving in the United States, that he was not in State A or the residence identified in the lawsuit in April 2002, and that he was not a resident of the county in which the lawsuit was filed in April 2002. The October 5, 2005 credit report listed three addresses for Applicant in State B, including the addresses on his post-hearing documents, and two addresses in State A, including the address on the court papers. The dates of these addresses are not shown on this credit report. The October 12, 2005 credit report reported two addresses for Applicant in State A as of January 1999 and February 2000, which are not the addresses in the court papers, and four addresses for Applicant in State B, beginning February 2000, which correlate to the addresses on Applicant's tax returns, W-2 statement, and the lease agreement.[22]

The two 2005 credit reports list an account with the original creditor with a "pays as agrees" status and a notation that the consumer requested the account to be closed. The account number listed on these credit reports is different from the account number listed in the court papers by the credit collection company. These credit reports also list

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[20]AE M, p. 3-4.

[21]AE M, p. 6-7.

[22]AE M - AE R.

another account with another agent for the same original creditor with a zero balance. However, the account had been transferred in 1999, the account numbers are different, and the account has a zero balance.[23]

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.

[23]GE 4, p. 6, 9; GE 5, p. 4, 6.

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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

> (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.

Ms. A, Applicant's close female friend, is a citizen and resident of the United States. His father, mother, two stepmothers, one brother, one sister, and one stepsister are deceased. One stepbrother is a resident and citizen of Canada, and his other stepsister is a resident and citizen of the United Kingdom. Thus, no security concern is raised by these family members. Applicant has three brothers, two stepbrothers, and five sisters-in-law who are citizens and residents of Afghanistan. Of his three brothers, Applicant talks by telephone with his youngest brother around the holidays. He last spoke to one brother in 2006 and lost connection with another brother because this brother's wife did not respect and get along with Applicant's mother. In 2006, one stepbrother asked Applicant for $500, and Applicant refused to give him the money, Because of his refusal, the stepbrother stopped speaking to him. Applicant speaks to

his other stepbrother every few years. Applicant does not speak or communicate with his five sisters-in-law. When he talks to his brothers, he does not talk to their wives. He will ask about the family during their conversation, but he does not ask specifically about any of his sisters-in-law, which is his family custom. Before Applicant traveled to Afghanistan in 2005, Applicant called one brother to ask if he or the family would be hurt if Applicant came to Afghanistan as an interpreter. His brother advised that no one would bother the family because of Applicant. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contact with his brothers must be considered in deciding whether to grant Applicant a clearance. The Government must establish that this family relationship creates 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 member who may be threatened by terrorists.

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

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 close relationship, and that Afghanistan and the United States are working together in the fight against terrorism and to continue developing democracy in Afghanistan. There is no evidence that the Afghanistan government targets U.S. citizens for protected information. The human rights issues in Afghanistan continue to be a concern, and the terrorist organizations, not the Afghanistan government, target U.S. citizens and interests in Afghanistan. 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 members in Afghanistan. Because of the significant activities of terrorist organizations in Afghanistan, Applicant's presence in Afghanistan, and his occasional contacts with his family raise a heightened risk under AG ¶¶ 7(a) and (b).

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.;

(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

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Applicant's normal relationship with his family members is not a basis to deny him a security clearance; however, his burden of proof on mitigation requires him to provide information that shows that his family is not subject to coercion. Applicant has not had any contact with one brother since 2006, and he lost contact with another brother because of the strained relationship between this brother's wife and his mother. His contact and communications with one stepbrother ended in 2006 after he refused to give him money. The record has no evidence his family members have held a political position, work for the Afghan government, or receive benefits from the Afghan government. His family members have not been targeted by the Afghanistan government or terrorists. His family members in Afghanistan have not suffered any abuses from the Afghanistan government or been threatened by terrorists. The person closest to Applicant is a citizen and resident of the United States. He owns no property nor does he have financial assets in Afghanistan. When working in Afghanistan, Applicant has taken specific care not to contact his family members to let them know he is working in Afghanistan. While performing his duties as cultural advisor, Afghan nationals, seeking to obtain contracts from the U.S. military, tried to bribe him with money and gifts in exchange for favorable treatment. He refused the gifts and gave any money left for him to his commander, which eventually returned the money to the U.S. Army finance department. Applicant also read the local newspapers and advised the military about what was being written in the papers about events. Balancing these factors as well as the efforts by the Afghanistan government in attacking terrorism within its borders, and the lack of evidence that the Afghanistan government targets U.S. citizens for protected information against Afghanistan's human rights record, I find that Applicant would resolve any conflict in favor of the U.S. interests. Likewise, any threats by terrorist organizations against Applicant's family in Afghanistan would be resolved in favor of U.S. interests because Applicant will be unable to help his family members in Afghanistan if there are any threats to them. His loyalties are to the United States, not Afghanistan or terrorist organizations. Applicant has mitigated the Government's

security concerns as to his family contacts specified in the SOR under AG ¶¶ 8(a), 8(b), 8(c), and 8(e).

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

> 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 overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

The 2005 credit report shows a large judgment against Applicant, which is not paid. The more recent credit reports also show one unpaid medical bill. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following are potentially applicable:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (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.; 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.

Applicant denies owing both SOR debts. When he learned about the judgment in 2005, he disputed it with the credit reporting companies because he had no knowledge

of the judgment and did not believe it was his. The judgment is not listed on the more recent credit reports, even though under the law of State A, the creditor had 20 years from the date of entry of judgment to seek enforcement in court, and under federal credit reporting laws, the debt can remain on his credit report until 2022. The 2012 credit reports also show that Applicant disputed the $904 debt because he believes insurance should have paid the debt.

Given that Applicant pays his bills, credit counseling is not necessary. Applicant retained legal services to help him resolve the unpaid medical bill because Applicant believes that worker's compensation should have paid or did pay the bill. As of the hearing, his attorney had not received a response to the inquiry letter. Given that his debts are paid, Applicant's testimony that he will pay this debt if the debt is verified as owed by him is credible. Applicant is in the process of resolving this debt.

Applicant denies any knowledge of the judgment entered against him in 2002. The court records list a defendant with a first and last name the same as Applicant's. This name is as common in Afghanistan as John Smith is in the United States. The papers also list an "aka" name that included an American, not Afghan, middle name, which Applicant denies is his. Applicant provided copies of his passport, Social Security card, commercial driver's license, and U.S. passport card. None of these documents have a middle name for Applicant. Likewise, Applicant did not list a middle name on his e-QIP. The court documents show that the court papers were served in April 2002 on the named defendant in State A, a person who was a resident of State A. Applicant provided documents indicating that he lived in State B in 2002 and before. The October 12, 2005 credit report shows Applicant with the same address as the addresses listed on his tax returns, W-2, and lease. Applicant's documents provide substantial evidence that he resided in State B from sometime before February 2000. Based on a review of all the documentation in the record, Applicant has provided substantial evidence to show that he was not a resident of or residing in State A. His evidence supports his denial that he was served with the court papers, that he is not the person name in the court papers, and that this judgment was against another person in State A with a similar, but different name. The 2005 credit reports reflect that Applicant had one account in good standing with this creditor in the past and another closed account with the creditor with a zero balance. The case detail sheet indicated that there was a disposition of the judgment in 2007. There is no explanation about the meaning of this entry, such as the judgment had been paid or vacated by the court. After reviewing all the evidence of record, I find that Applicant has resolved this debt issue for security clearance purposes. Applicant has mitigated the financial security concerns under AG ¶¶ 20(c) and 20(e).

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 fled Afghanistan during the Russian invasion and entered the United States without a visa or passport. Although his asylum request was denied, he legally remained in the U.S. through an amnesty program. He became a U.S. citizen in 1996. He works in private industry when not working on behalf of the United States. He served two duty tours in Afghanistan, working for the U.S. Army as an interpreter. During his first tour, he served as an interpreter and cultural advisor during the spring offensive in 2005. In 2010, he provided information to the U.S. Army about local activities and views because he read the local newspapers. Afghan nationals offered him bribes to help them obtain U.S. work contracts. He refused the bribes and gave any money left as a bribe to his command. He has put his life in harm's way for the United States. His refusal to accept bribes and his decision to give any bribe money left for him to his command reflects an honest and trustworthy person. His family does not present a security concern as he limits his interactions with them and remains separate from them when he is working in Afghanistan. Applicant is loyal to the United States and would make decisions in favor of the United States should a foreign national try to pressure, coerce, or exploit him because of his family in Afghanistan.

Applicant presented sufficient evidence to question his responsibility for the judgment listed on Applicant's 2005 credit reports. The court papers list a second name for the named defendant in the case, a name that Applicant has never used and is not part of his name as verified by his passport, driver's license, Social Security card, and e-QIP. His tax returns, W-2, and lease agreement provided substantial evidence to show

that he was a resident of State B, when the court papers were filed and served on some person in State A.[24] The court papers show an account number for the debt which is different from the account number for the two accounts Applicant held with the original creditor. One of these accounts was in good standing and the second account is closed. Applicant successfully disputed the judgment with the credit reporting agencies. Except for the judgment and one medical bill, which he is working to resolve, Applicant pays his bills. He does not live beyond his financial means. His finances do not raise a security concern.

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 his foreign influence and finances under Guidelines B and F.

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
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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.

MARY E. HENRY
Administrative Judge

[24]As a resident of State B, the provisions of Art. 3, § 313 apply.