



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



In the matter of: )  
)  
) ISCR Case No. 11-10249  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

September 30, 2013

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has 20 delinquent debts totaling \$885,275.99, identified on the Statement of Reasons (SOR). Appellant failed to produce sufficient documentation that 19 of his debts have been addressed or are otherwise satisfied. He has not mitigated the Financial Considerations security concerns. Additionally, Applicant owns a share of undeveloped real estate in Afghanistan, maintains contact with his cousins in Afghanistan, and is a childhood friend of a high-level Afghani leader. He has not mitigated the Foreign Influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his electronic Security Clearance Application (e-QIP) on February 23, 2010. On February 13, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the Guidelines for Financial Considerations and Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense*

*Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR (Answer) on March 16, 2013, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 30, 2013. A notice of hearing was issued to Applicant on May 3, 2013, scheduling the hearing for July 29, 2013. The hearing was convened on July 29, 2013, as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 8, 2013. The record was left open until August 9, 2013, for receipt of additional documentation. On August 8, 2013, Applicant presented Applicant's Exhibit (AE) A. Department Counsel had no objection to AE A and it was admitted into evidence. The record was then closed.

### **Procedural Ruling**

#### **Request to take Administrative Notice**

At the hearing, the Government requested I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a six-page summary of the facts, supported by nine Government documents pertaining to Afghanistan, identified as Hearing Exhibit (HE) I. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant is 58 years old. He was born in Afghanistan. He was conscripted for two years into the Afghan Army, where he served as a truck driver. He immigrated to the United States permanently in 1981, after visiting the United States on a student visa in 1976 or 1977. He has worked for the past four years as a linguist and is employed by a government contractor. He has been married to a naturalized U.S. citizen for over 30 years. They have two adult children, who are natural born U.S. citizens. Neither of Applicant's children have ever visited Afghanistan. Applicant's mother, two brothers and two sisters are also naturalized U.S. citizens and reside in the United States. (GE 1; GE 3; Tr. 28-33.)

Applicant has received a number of certificates acknowledging his contributions as a linguist. They reflect appreciation for his loyalty, patriotism, and support during the war on terror. (AE A.)

#### **Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified 20 delinquent debts totaling \$885,275.99. Applicant's debts appear in credit reports entered into evidence. Applicant admitted all of the allegations. (Answer.)

Applicant attributes his debts to the failure of his retail store. He testified that he had good credit before 2008, when his business failed. However, when the U.S. economy declined in 2008, his business also declined. He borrowed money for six months to keep the store operational. However, the store continued to lose money and he was forced to close it. (Tr. 44-59.)

Applicant testified that he filed Chapter 13 bankruptcy in December 2008. He testified that all of his debts listed on the SOR were included in the bankruptcy filing, although he did not provide a copy of any of his bankruptcy court records. He stated that he was current on his payments of \$840 per month to the trustee. He stated in his post-hearing submission that he has paid the trustee a total of \$46,200 as of August 2013, but he did not provide documentation to support that claim. He indicated his final payment to the trustee would be made in December 2013, and then his debts would be discharged. Credit reports dated July 28, 2013; April 23, 2013; and February 18, 2010, show that the debts identified in SOR allegations 1.c through 1.q were reported on Applicant's 2008 Bankruptcy filing. (GE 4; GE 5; GE 6; GE 7; GE 8; AE A; Tr. 44-59.)

Of Applicant's remaining five debts, which were not identified on his credit reports as being part of the bankruptcy filing, only one has been satisfied. Applicant's July 28, 2013 credit report identified that SOR allegation 1.a has a zero balance and reflected no recent negative history. Allegation 1.b is listed as charged off in the amount of \$21,118 on the July 28, 2013 credit report. Allegations 1.r, 1.s, and 1.t, allege three debts to the same creditor totaling \$36,976. They are not identified as part of Applicant's bankruptcy on the credit reports. These debts remain outstanding. (GE 4; GE 5; GE 6; GE 7; GE 8.)

Applicant stated in his post hearing submission that he currently has \$65,000 in his savings account. (AE A.)

## **Foreign Influence**

Applicant's father is deceased. When he passed away, Applicant, his mother, and his four siblings inherited vacant land in Afghanistan valued at approximately \$100,000. Applicant hopes to sell the property and split the proceeds between his family members. Applicant does not own any other property in Afghanistan. He has no bank accounts there. (GE 3; Tr. 61-65.)

Applicant has two-or-three cousins in Afghanistan. His aunt, who resided in Afghanistan, passed away in 2012. Applicant communicates with one cousin in Afghanistan, who is helping him monitor the property there. They speak every two-to-three months. (Tr. 60-61.)

Applicant is a childhood friend of a high-level Afghani leader. Their families were close when they were in high school. After high school, they had contact in 1981, when both Applicant and the Afghani leader were studying in another foreign nation. They last had contact in 2005, when Applicant met the leader for lunch at a government building. (GE 3; Tr. 66-69.)

## **Afghanistan**

In May 2012 the United States and Afghanistan signed a ten-year strategic partnership agreement that demonstrated the United States' enduring commitment to strengthen Afghan sovereignty, stability, and prosperity. Since that time, the core goal of the United States in Afghanistan has been to disrupt, dismantle, and defeat al-Qaida and its affiliates, and to prevent their return to Afghanistan. Despite progress made since the Taliban was deposed, Afghanistan still faces challenges like defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding shattered physical, economic, and political infrastructure. (HE I.)

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly sophisticated and destabilizing. Human rights problems include: armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; torture and abuse of detainees by security forces; extrajudicial killings; poor prison conditions; arbitrary arrests and detention; prolonged pretrial detention; judicial corruption; violation of privacy; restrictions on freedom of speech; and abuse of children. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence. U.S. citizens who are also citizens of Afghanistan may be subject to other laws that impose special obligations. (HE I.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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 EO 10865 provides that adverse 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 F, Financial Considerations**

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has had financial problems since at least 2008, when he borrowed money to support his business and was unable to repay his debts. SOR allegation 1.a has a zero balance and reflected no recent negative history. Thus 1.a raises no concern. However, allegations 1.b, 1.r, 1.s, and 1.t, continue to remain delinquent. Further, the debts identified in SOR allegations 1.c through 1.q were reported to be listed on Applicant's 2008 Bankruptcy filing. Applicant bears the burden to produce evidence to establish he is current on his payments to his bankruptcy trustee; however, he presented no documentation to establish his claim. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 indicated that his financial problems were the result of a business downturn. However, he failed to show he acted responsibly once he found a new job. He has been employed for the past four years. During that time, he has managed to save \$65,000. Yet, he has failed to address allegations 1.b, 1.r, 1.s, and 1.t, which continue to remain delinquent. Further, he did not provide proof he is paying his

bankruptcy trustee as agreed upon. Therefore, I cannot conclude that future financial delinquencies are unlikely to occur. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) does not apply. Applicant explained that he incurred debts as a result of the failure of his retail clothing store. This was a circumstance beyond his control. However, to be fully applicable AG ¶ 20(b) also requires that the individual demonstrate that he acted responsibly under the circumstances. Applicant failed to produce evidence that he has addressed his delinquent accounts.

Applicant presented no evidence that he attended financial counseling. Further, there is little evidence that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not provided evidence to establish he made a good-faith effort to pay or resolve his delinquent debts. While his credit reports show that allegations 1.c through 1.q are included in his Chapter 13 bankruptcy filing, he failed to document the status of his repayment plan. Further, allegations 1.b, 1.r, 1.s, and 1.t, continue to remain delinquent. AG ¶ 20(d) is not applicable.

Applicant failed to present evidence to show that he was in the process of formally disputing any of his debts. AG ¶ 20(e) is inapplicable.

### **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(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;

(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; 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.

Applicant has ties to his cousin and his childhood friend, both of whom are citizens and residents in Afghanistan. Applicant also has a significant financial interest in the property he inherited in Afghanistan.

To be fully applicable, both AG ¶¶ 7(a) and 7(e) require substantial evidence of a heightened risk. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist groups and other criminal organizations operate within Afghanistan. Further, the government of Afghanistan has been identified as committing human rights violations. In this instance, a heightened risk is present. The evidence is sufficient to raise the above disqualifying conditions.

Additionally, a significant risk is present in Applicant's friendship with a high-ranking Afghani government official. This connection could create a potential conflict of interest between his duty to protect sensitive information and his desire to help his friend. AG ¶ 7(b) is disqualifying.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationship 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 interests in favor of the U.S. interests;

(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 interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has the burden to demonstrate evidence sufficient to refute or mitigate security concerns raised by the allegations and he has failed to produce sufficient mitigating evidence. Here, the primary concerns are Applicant's relationships with Afghanistan including: his foreign property located there; his friend who is a high-ranking government official; and his relatives in Afghanistan. His interest in the property in Afghanistan is approximately \$16,666 (or one sixth of \$100,000). This is not an insignificant amount in light of his significant debt in the United States (even in light of his stated savings of \$65,000). Further, he keeps in contact with his Afghani cousin out of concern for his property. His childhood friendship with a high-ranking Afghani leader, while not recent, was once close and is still cause for concern because it could potentially create a risk for foreign influence or exploitation. While I recognize that Applicant's wife, children, mother, and siblings are all citizens and residents of the United States, I cannot find that Applicant has such deep and longstanding relationships and loyalties in the U.S. that he can be expected to resolve any conflict of interests in favor of the U.S. interests, due to his ties to Afghanistan. None of the above mitigating conditions apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has supported the United States as a linguist for four years. He has earned a number of certificates in recognition of his exceptional work. However, Appellant failed to produce sufficient documentation that his debts have been addressed or are otherwise satisfied. He has not mitigated the Financial Considerations security concerns. Additionally, Applicant owns a share of undeveloped real estate in Afghanistan, maintains contact with his cousins in Afghanistan, and is a childhood friend of a high-level Afghani leader. Accordingly, continuation of these circumstances is highly likely, and the potential for coercion, exploitation, or duress remains undiminished. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations or Foreign Influence security concerns.

### **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 F:	<b>AGAINST APPLICANT</b>
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	Against Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i:	Against Applicant
Subparagraphs 1.j:	Against Applicant
Subparagraphs 1.k:	Against Applicant
Subparagraphs 1.l:	Against Applicant
Subparagraphs 1.m:	Against Applicant
Subparagraphs 1.n:	Against Applicant
Subparagraphs 1.o:	Against Applicant
Subparagraphs 1.p:	Against Applicant
Subparagraphs 1.q:	Against Applicant
Subparagraphs 1.r:	Against Applicant
Subparagraphs 1.s:	Against Applicant
Subparagraphs 1.t:	Against Applicant
Paragraph 2, Guideline B:	<b>AGAINST APPLICANT</b>
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge