



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



In the matter of: )  
)  
) ISCR Case No. 14-06893  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

08/24/2016  
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**Decision**  
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WHITE, David M., Administrative Judge:

Applicant was born and raised in Afghanistan. He served as a contract interpreter/translator and cultural advisor for coalition forces and U.S. leaders over the past decade. His parents, sister, fiancée, and extended family members are all resident citizens of Afghanistan, and he is the sole source of financial support for many of them. He failed to mitigate resulting security concerns. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF 86) on May 7 2014.<sup>1</sup> On July 1, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR)

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<sup>1</sup>Item 4. Although the SF 86 indicates that it was certified on May 6, 2014, Applicant signed and dated the certification page on May 7, 2014.

to Applicant, detailing security concerns under Guideline B (Foreign Influence).<sup>2</sup> 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 on July 19, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on December 21, 2015. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant received his copy of the FORM on January 17, 2016. He did not object to consideration of the Items in the FORM or to Department Counsel's administrative notice request; but he did submit additional evidence within the time allotted, to which Department Counsel had no objection. I received the case assignment on March 14, 2016. The eight Items in the FORM are admitted into evidence. Department Counsel's request for administrative notice of the facts concerning Afghanistan, as stated on pages 3 through 6 of that request, is granted.<sup>5</sup> Applicant's FORM response is admitted into evidence as Exhibit (AE) A. Applicant made a second written submission, which was forwarded by the senior legal advisor of Applicant's overseas command on August 10, 2016. Department Counsel had no objection to its consideration, and it is admitted into evidence as AE B.

### **Findings of Fact**

Applicant is a 35-year-old employee of a defense contractor, where he has worked since April 2010 as an interpreter/translator supporting U.S. and coalition forces in Afghanistan. He has never held a U.S. security clearance. He is engaged to be married for the first time, and has no children.<sup>6</sup> Applicant admitted all of the factual allegations set forth in the SOR, with explanations.<sup>7</sup> Applicant's admissions, including

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<sup>2</sup>Item 1.

<sup>3</sup>Item 3.

<sup>4</sup>The Government submitted eight Items in support of the SOR allegations.

<sup>5</sup>Department Counsel submitted six documents in support of his request for administrative notice, comprising the relevant portions of official U.S. Government publications that he cited as authority for the noticed facts. Website addresses for complete copies of those documents were also provided.

<sup>6</sup>Item 4; AE A.

<sup>7</sup>Item 3.

those made in two counterintelligence screening questionnaires,<sup>8</sup> are incorporated in the following findings.

Applicant was born and raised in Afghanistan. From January 2002, when he turned 21 years old, until December 2005 he worked as an interpreter/linguist for a U.S. news network, a coalition European army (as part of the International Security Assistance Force), and the United Nations Development Program Election Project. From December 2005 until December 2008, he worked for a Federal contractor as an interpreter/translator working with U.S. and Afghan military commanders. On December 27, 2008, he immigrated to the United States after obtaining an SQ1 visa under the "Special Immigrant" program. He applied for a DoD Public Trust position in 2009, but that application was not processed since he was not a U.S. citizen at the time.<sup>9</sup>

Applicant lived in the United States from December 2008 until he returned to Afghanistan in March or April 2010 to start his present employment as an interpreter/translator under another DoD contract. He listed his residences during those 15 months as two rental properties in northern Virginia, but his employment during that period was as a contract cultural advisor/role player working at an Army facility in Louisiana. On March 31, 2014, Applicant was issued a naturalization certificate and became a U.S. citizen.<sup>10</sup>

Applicant's father, mother, stepmother, sister, and fiancée are all lifelong citizens and residents of Afghanistan. He does not live with them, but has almost daily contact with them in person or by telephone. His father is in his mid-seventies and no longer works. His mother and stepmother are homemakers. His fiancée and 17-year-old sister are students. He said that his parents and fiancée applied for Afghani passports in 2015 so that he could sponsor them for entry into the United States, but the passports have not yet been issued. He has been engaged to his fiancée since November 2009, and said he intends to marry her when he returns to the United States at some future time.<sup>11</sup>

Applicant is the sole source of financial support for his family. He said that he has sent contributions of \$600 to \$1,900 to his parents, sister, and cousin on a monthly basis for the past six years. He expressed that it is his responsibility to support his family. In addition, he provided about \$50,000 to his father, through a wire transfer to his cousin's bank account, to pay for rebuilding and renovating the family home that was damaged due to flooding in the nearby Kabul river. He estimated the total financial

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<sup>8</sup>Item 5; Item 8.

<sup>9</sup>Item 4; Item 5; Item 7; Item 8; AE A.

<sup>10</sup>Item 3; Item 4; Item 5; AE A.

<sup>11</sup>Item 3; Item 4; Item 5; Item 8; AE A..

support he provided to his father to be \$80,000. Applicant provided no evidence of any financial or other property interests in the United States.<sup>12</sup>

Applicant provided a large number of letters from senior coalition and U.S. military leaders and DoD civilian personnel with and for whom he has worked over the past decade or more. All of these individuals expressed their high opinion of his good character, integrity, competence, and dedication to success of the coalition's efforts. There is no contrary evidence, and it is readily apparent that Applicant has provided very valuable and discreet services as an interpreter/translator and cultural advisor during that time. Applicant's work did not involve any combat operations or other situations in which his well being was in imminent danger from hostile forces. However, he was instrumental in de-escalating numerous potentially violent situations during which Afghan military or civilian personnel came close to inciting or inflicting physical harm on U.S. military personnel due to cultural misunderstandings or communication problems.<sup>13</sup>

I took administrative notice of the facts set forth in Department Counsel's request concerning Afghanistan, which are incorporated herein by reference.<sup>14</sup> Of particular significance are the poor human rights situation; and the active and hostile presence of Al Qaida, the Taliban, the Haqqani Network, and other insurgent and extremist groups that generate instability and openly attack police, security, and military forces; as well as the local populace and 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>12</sup>Item 3; Item 4 at 33. The SOR erroneously alleged that Applicant gave his father \$50,000 to buy a new house. Applicant clarified that these funds were used to repair and renovate the family home after flooding. This difference is of no security significance.

<sup>13</sup>Item 3; AE A; AE B.

<sup>14</sup>Applicant did not object to the Administrative Notice request or dispute any facts set forth therein.

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 persuasively argued that substantial evidence in this case established three 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;

(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.

Afghanistan has significant internal anti-western terrorism threats that operate openly contrary to U.S. interests. Accordingly, Applicant's substantial and close family connections in that country have more potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (e), than would similar connections to many other countries.

Applicant's parents, sister, fiancée, and extended family members are resident citizens of Afghanistan. All of his immediate relatives are financially dependent on him, and live in the home they own in Kabul - an area particularly susceptible to militant, insurgent, and terrorist presence and activity. He has an entirely legitimate, serious interest in the welfare of his family members in Afghanistan, creating the potential for conflict of interest under AG ¶ 7(b). Although the value of the family home is not clearly established in the record, it is Applicant's immediate family's only significant asset into which he recently invested about \$50,000 for repairs and renovations. It accordingly constitutes a substantial foreign financial interest for purposes of AG ¶ 7(e).

These facts meet the Government's burden of production by raising all three of the aforementioned disqualifying conditions. Applicant's contacts, relationships, and connections with Afghanistan through his relatives and fiancée, who are citizens and 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), 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 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.

Considered in light of the substantial anti-western insurgent and terrorism threats in 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. He has perfectly legitimate and appropriately close relationships with family members now living in Afghanistan, and a strong interest in protecting his family members and fiancée there. His communication and contact with his Afghanistan-resident family members and fiancée are neither casual nor infrequent, and he regularly sees and communicates with them. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and 8(c).

The evidence also fails to establish significant mitigation under AG ¶¶ 8(b) or 8(f). Applicant provided no evidence of any longstanding relationships, loyalty, or property interests in the United States, other than having found employment as a DoD contract linguist and cultural advisor to be a lucrative and satisfying way to support his family while working toward a better future for his native country. He took advantage of the "Special Immigrant Program" to obtain fast-track approval of naturalized citizenship, but only came to the United States for slightly more than a year before returning to Afghanistan where all of his important interests and connections are located. His only substantial family asset is the family home in Afghanistan, and most of his income is transferred to his Afghan relatives for their support. These are commendable and responsible actions, but demonstrate the strength and importance of those relationships and interests to him. He neither claimed nor established that he has endured life-threatening conditions while making significant contributions to the national security, which would sufficiently demonstrate deep or longstanding U.S. relationships or loyalties under Appeal Board precedent. Department Counsel thoroughly and accurately described that binding precedent in the FORM, a copy of which Applicant was provided and did not dispute.

### **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 is seeking to continue providing his excellent services to U.S. military forces deployed overseas with the enhanced capabilities of a security clearance. A very impressive number of high ranking and experienced U.S. and coalition leaders with whom he has served over the past decade wrote to express their unqualified complimentary opinions concerning his dedication, integrity, and good character.

However, the inherent potential for pressure, coercion, exploitation, or duress deriving from the presence of Applicant's family members, fiancée, and family home in Afghanistan 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 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 willingness and desire to serve in support of deployed coalition military units is highly commendable, but does not justify placing him or his relatives at risk of exploitation due to his access to classified information. He did not demonstrate sufficient connections to the United States to outweigh the heightened risks and potential conflicts under these circumstances.

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

Subparagraphs 1.a through 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge