



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-00221
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

08/04/2016

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**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant was born in Afghanistan. He immigrated to the United States in 2008, and became a naturalized U.S. citizen in 2014. He was deployed and risked his life in support of U.S. interests in Afghanistan. His mother, wife, and immediate and extended relatives live in Afghanistan. He failed to demonstrate that his contacts in Afghanistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States and his connections to family members. He failed to mitigate the foreign influence security concerns raised. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 30, 2014. On July 23, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence).<sup>1</sup>

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<sup>1</sup> DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

Applicant answered the SOR on October 9, 2015, and requested a hearing before an administrative judge. The case was assigned to me on March 9, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 11, 2016, scheduling a hearing for March 30, 2016. The hearing was convened as scheduled.

Applicant testified at the hearing and offered exhibits (AE) 1 through 10. The Government offered exhibits (GE) 1 through 3. GE 1 and GE 2, and AE 1 through 10 were admitted without objections. GE 3 is a request for me to take administrative notice of facts concerning the government of Afghanistan. GE 3 was marked and attached to the record, but not admitted into evidence. Applicant raised no objections, and I took administrative notice of facts concerning the government of Afghanistan based on the source documents. DOHA received the hearing transcript (Tr.) on April 7, 2015.

### **Procedural and Evidentiary Rulings**

At the end of the hearing, the Government moved to amend the SOR to conform it with the evidence presented. Applicant did not object and I granted the motion. (Tr. 87-89) The following paragraphs were added to the SOR:

1.f. Your spouse is a citizen and resident of Afghanistan.

1.g. Your parents-in-law are citizens and residents of Afghanistan.

1.h. Your wife's four brothers and two sisters are citizens and residents of Afghanistan.

### **Findings of Fact**

Applicant admitted all the SOR factual allegations. His admissions to the SOR and at his hearing are incorporated as findings of fact. After a thorough review of all the evidence, I make the following findings of fact:

Applicant is a 35-year-old linguist seeking a position with a Defense contractor supporting U.S. interests abroad. His job is conditioned on his eligibility for a clearance.

Applicant was born and raised in Afghanistan. His mother, four siblings, his wife, her parents, her six siblings, and their immediate and extended family members are citizens and residents of Afghanistan. After graduating from high school, he became a tailor's apprentice. Between March 2006 and November 2008, he worked as a linguist for a U.S. company supporting U.S. personnel in Afghanistan. He testified he volunteered for the job because he believed he could help both countries with his work. His parents were supportive of Applicant taking a job as a translator for the U.S. company.

In 2008, Applicant was sponsored by the U.S. Government to immigrate to the United States under a special immigration visa because of his linguist abilities. While in

the United States, he worked as a language instructor for a Federal agency. Thereafter, Applicant worked for U.S. Government contractors in Afghanistan during the following periods: August 2009 through July 2011, November 2011 through July 2012, and from April 2014 until August 2014.

Between 2006 and 2014, Applicant worked with U.S. military personnel deployed to Afghanistan, including Marines, Special Forces, Army, and Air Force units. He was integrated with U.S. units, lived with U.S. personnel, and participated in patrols and training missions. Applicant placed his life in danger by being exposed to enemy fire, and was under the constant threat of improvised explosive devices. Applicant testified that he would be in danger if elements in Afghanistan were to learn about his work for U.S. personnel. Applicant submitted numerous certificates of appreciation and reference letters lauding his professionalism, dedication, and linguistic abilities. A Marine captain stated that Applicant was trusted with sensitive operational information when he was assigned with them. (AE 1-10)

In 2014, Applicant deployed to Afghanistan after taking a job translating documents for which he needed a clearance. He was required to return to the United States when his interim security clearance was terminated because of the security concerns raised in the SOR.

Applicant became a naturalized U.S. citizen in 2014. He testified that his full commitment and loyalty is to the United States, its people, and the Constitution. He took an oath when he became a U.S. citizen and he is fully committed to honoring his oath. At his hearing, Applicant acknowledged that he and his family in Afghanistan would probably be in danger if some people in Afghanistan learned about his work in support of U.S. personnel. His immediate family knows that he is a linguist working for U.S. companies, but he is sure none of his extended family members or friends are aware of his work. (Tr. 72)

Applicant's father was conscripted and served three years in the Afghan military and a period in the reserves as required by Afghan law. After his service, Applicant's father worked for the Afghan department of agriculture. He passed away in 2011. Applicant's mother worked as a kindergarten teacher. She is currently retired and receives a \$200 pension from the Afghan government.

While employed with defense contractors, Applicant provided financial support to his mother and siblings. As the oldest son in his family, Applicant acquired the cultural and emotional obligation of supporting his family. Between 2006 and 2008, Applicant's salary was about \$700 a month. He would keep \$200 for personal expenses, and he sent the rest of his earnings home to his mother. (Tr. 65) In 2010, Applicant sent his mother about \$40,000 for the purchase of the family home. He estimated that he has sent his mother a total of about \$80,000 since 2006. Between 2008 and 2014, he sent at least \$300 a month.

Applicant married his wife in Afghanistan in 2014. They have no children. His wife applied for a U.S. visa and they are waiting for its approval. Applicant and his family invited around 800 people to his wedding and he paid approximately \$18,000 for his wedding celebration. Applicant stopped sending money on a regular basis to his family after he was terminated from his employment with a Defense contractor because he lost his interim security clearance. Applicant now sends financial support to his mother and wife based on his earnings.

Applicant has two brothers, ages 29 (a tailor) and 26 (cameraman), and two sisters, ages 32 (housewife) and 20 (nurse). He has telephonic contact with his brothers at least once a week. He talks to his oldest sister about once a month, and because his younger sister lives with his mother, he speaks to her, his mother, and wife daily. Applicant has no contact with his extended family members or friends except when he travels to Afghanistan to visit his mother. He travelled to Afghanistan in 2010, 2011, 2014, and 2015.

Applicant's mother-in-law is a cook at an Afghan government industry building. He denied knowing whether his father-in-law ever worked for or has contacts in the Afghan government. He assumed his father-in-law served in the Afghan military at least his three-year mandatory period. Applicant's wife has four brothers and two sisters. He has telephonic contact with them approximately once a month when he is living in the United States. One of his wife's brothers is 26 years old and a college student. Applicant has no knowledge of the other three brothers' current occupation. Both of his wife's sisters are unemployed. Applicant testified that he has no contact with his extended family members when he is in the United States. He has contact with his and his wife's extended family members when he is in Afghanistan.

Applicant testified that he is now a proud U.S. citizen and he intends to live and retire in Florida, United States. Applicant has no property or financial interests in the United States, except for his job. He claimed that he owns no property or financial interests in any other country. However, he sent his mother about \$40,000 for her to buy a home in Afghanistan.

I take administrative notice of the following facts. Afghanistan is located in Southwestern Asia and borders Pakistan, Iran, and Russia. It has been an independent nation since 1919, after the British relinquished control. A monarchy ruled from 1919 until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. In 1979, Soviet forces invaded and occupied Afghanistan. A resistance movement eventually led to an agreement known as the Geneva Accords, signed by Afghanistan, Pakistan, the United States, and the Soviet Union, which ensured Soviet forces withdrew by February 1989. A civil war ensued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to anarchy and the existence of warlords. The Taliban sought to impose an extreme interpretation of Islam and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin Laden, al Qaida, and other terrorist organizations.

After the September 11, 2001 terrorist attacks, demands to expel Bin Laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power in November 2001. The new democratic government took power in 2004, after a popular election.

Afghanistan faces a threat from the Afghan insurgency and terrorists including al Qaida, the Haqqani Network, and the Taliban, which continue to assert power and intimidation within the country. Safety and security are key issues, because these terrorists target United States and Afghan interests by suicide operations, bombings, assassinations, carjacking, assaults, and hostage taking. At this time, the risk of terrorist activity remains extremely high.

Afghanistan has significant human-rights problems. Civilians continue to bear the brunt of the violence and increased attacks from terrorist organizations. The most significant human-rights problems included credible reports of torture and abuse of detainees by Afghan security forces; widespread violence, including armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; pervasive official corruption; and endemic violence and societal discrimination against women. Corruption is endemic throughout society, and flows of money from the military, international donors, and the drug trade continue to exacerbate the problem.

Afghan leaders continue to face the eroding effect of official corruption and drug trade. Criminal networks and narcotics constitute a source of funding for the insurgency in Afghanistan. Other insurgent groups and anti-coalition organizations also operate in Afghanistan. Insurgents have targeted non-government organizations, journalists, government workers, and United Nation workers. Instability along the Pakistan-Afghan frontier continued to provide al Qaida with leadership mobility and the ability to conduct training and operational planning, targeting Western European and U.S. interests.

The U.S. Department of State has declared that the security threat to all American citizens in Afghanistan remains critical as no part of the country is immune to violence. Numerous terrorist organizations, including the Haqqani Network, the Afghan and Pakistani Taliban, al Qaida, and Lakshar-e-Tayyiba (LET) continue to operate within Afghanistan orchestrating organized attacks against U.S. personnel and assets within the country.

In 2012, the United States and Afghanistan signed a 10-year strategic partnership agreement that demonstrates the United States commitment to strengthening Afghanistan's sovereignty and stability. The Afghan central governmental capacity and effectiveness has increased, but local governance remains weak and all levels of government are plagued by governmental corruption. The convergence of insurgent, terrorist, and criminal networks is pervasive and constitutes a threat to Afghanistan's stability. Criminal networks, insurgent groups, and corrupt government officials are often interlinked via multi-layered connections, making ties between the

officials and criminal activity difficult to prove and prosecute. These factors all contribute to popular disaffection with the government.

## **Policies**

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Guideline B, Foreign Influence

The concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

- (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>2</sup> Applicant has contacts and a close relationship of affection and obligation with his mother, siblings, and their extended families, and with his wife, her parents, her siblings, and her extended family members, all of whom are citizens and residents of Afghanistan.

This contact creates a risk of foreign pressure or attempted exploitation because there is always the possibility that Afghan agents, criminals, or terrorists operating in Afghanistan may exploit the opportunity to obtain information about the United States.

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<sup>2</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

With its negative human-rights record, its government, and the violent insurgency that operates within the Afghan borders, it is conceivable that Applicant's relatives, as well as his wife and her relatives, could be vulnerable to pressure or coercion.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three foreign influence mitigating conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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; and

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that the above mitigating conditions do not fully apply and do not mitigate the security concerns. Applicant's evidence is insufficient to establish that it is unlikely he will be placed in a position of having to choose between the interests of a foreign individual and the interests of the United States. Applicant's mother, wife, and his and her immediate and extended family members are residents and citizens of Afghanistan. Applicant has frequent contact with his mother, wife, and his immediate family members. If members of the community, terrorists, criminals, or corrupt government officials became aware of his work for U.S. interests, his mother, wife, and family members could be in danger or placed at unnecessary risk.

In deciding whether Applicant's family members are in a position to be exploited, I considered Afghanistan's form of government. The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family



member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Afghanistan do not pose a security risk.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives, terrorists, or criminals from Afghanistan seek or have sought classified or economic information from or through Applicant's or his wife's relatives living in Afghanistan. However, we cannot rule out such a possibility in the future. There is evidence of insurgency operations being conducted in Afghanistan against U.S. forces. There is also evidence that Afghanistan has active terrorist groups operating within its borders. It is possible that terrorists would attempt to coerce Applicant through his relatives living in Afghanistan, if they determined it was advantageous to do so. This places the burden of persuasion on Applicant to demonstrate that his contacts in Afghanistan do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his connections to family members.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family members living in Afghanistan. Applicant immigrated to the United States in 2008, at age 28, and became a naturalized U.S. citizen in 2014.

Applicant married his Afghan-born wife in 2014. She lives with his mother in Afghanistan. He has no property or financial interests in the United States, other than his job with a Defense contractor. Applicant has been a productive U.S. citizen. He has established strong connections to the United States. This is demonstrated by his service as a linguist supporting U.S. service members in Afghanistan. During his service, he risked his life while working in support of U.S. personnel. Applicant purchased a home for his mother in Afghanistan. He claimed he has no financial or property interests in Afghanistan or any other foreign country.

Notwithstanding, the record evidence fails to support a determination that Applicant's ties and sense of obligation to the United State are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even

under circumstances detrimental to his mother, wife, and extended family members and friends in Afghanistan.

Applicant's contact with his wife and mother in Afghanistan create a heightened risk of foreign influence and exploitation. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Afghanistan who might be coerced by terrorists, criminals, or governmental entities in that country.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline B in my whole-person analysis. Considering the evidence as a whole, Applicant's favorable evidence is insufficient to demonstrate that his contacts in Afghanistan do not pose a security risk, and that he is not in a position to be forced to choose between loyalty to the United States and his connections to family members and his wife. I specifically considered Applicant's service to U.S. interests in Afghanistan under dangerous circumstances. On balance, and considering the evidence as a whole, Applicant failed to mitigate the Guideline B 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 B:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge