



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-04706  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2016  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Eligibility for a security clearance is granted.

**Statement of the Case**

On January 21, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on March 18, 2016, and requested a hearing before an administrative judge. The case was assigned to me on October 5, 2016. Applicant requested an expedited hearing and waived the notice requirements. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 26,

2016. I convened the hearing as scheduled on November 2, 2016. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibits (AE) A through C, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 14, 2016.

### **Request for Administrative Notice**

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about Afghanistan. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications. The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old. He was born in Afghanistan and graduated from high school in 2000. He attended college, but did not earn a degree. He emigrated from Afghanistan to the United States in 2006 and became a naturalized citizen in 2011. After becoming a citizen he sponsored his Afghan fiancée for entry into the United States. They married in the United States in 2012, and she is a permanent resident of the United States. She intends on becoming a U.S. citizen. They have two children born in the United States.<sup>1</sup>

In 2002, Applicant began working as a linguist for a U.S. government contractor. He served with the U.S. Army and was attached to a Special Forces unit where he participated in combat missions until 2005. He was granted a visa and came to the United States in 2006. He worked at a café and also participated in military rotations where he would teach troops about the culture in Afghanistan before they deployed. In 2008, he was offered a job with a government contractor and worked in Afghanistan with the U.S. Marines for about a year. He then was hired as a linguist by another government contractor and lived and worked in Afghanistan until 2012. He lived in Afghanistan from 2008 to 2012. Before he obtained his U.S. citizenship, he would return to the United States to renew his travel documents. He has been employed by his current employer, a government contractor, since 2012.<sup>2</sup>

Applicant's parents are citizens and residents of Afghanistan. In 2014, Applicant assisted them in applying for visas to move to the United States. Both of his parents were interviewed by embassy officials in February 2016. In September 2016, his father received notification from the U.S. embassy in Afghanistan that his immigration visa was

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<sup>1</sup> Tr. 26-28.

<sup>2</sup> Tr. 28-31; GE 1.

almost complete. It requested he provide his passport and a medical examination before proceeding further, which he did. He is now waiting for the visa to be issued. Applicant provided a copy of the notification document.<sup>3</sup> His mother's immigration visa is pending. Applicant intends to take care of his parents when they reside in the United States. He wants to provide them a comfortable life. His parents are aware that Applicant is working in Afghanistan, but do not know his job. They were aware that he was working for a U.S. government contractor involved in military operations from 2002 to 2006.<sup>4</sup>

Applicant's father is a retired colonel in the Afghan Army. He is 67 years old. Applicant does not know when he retired or if he receives a military pension, but believes if he does it is minimal. His mother is 64 years old and is a homemaker.<sup>5</sup>

Applicant provides his parents some financial support when they are in need. His father had heart surgery and his mother has a knee issue. They sometimes need assistance with paying for their medications. Applicant testified that the support he provides is as needed and not regularly.<sup>6</sup> Applicant does not travel off of the military compound in Afghanistan. He does not visit his family. The last time he saw his parents was in 2012.<sup>7</sup>

Applicant has six sisters and three brothers who are citizens and residents of Afghanistan. All of his sisters are married. Applicant explained that culturally when a woman marries, her husband then becomes responsible for her. His sisters no longer live in the family home. Two live with their husband's families. One sister lives in Germany with her husband who is a German citizen. She intends to take the exam to become a German citizen. She has lived in Germany for 20 years. Applicant has more contact with her. The remaining sisters live with their husband's on their own. He testified that he may have contact with them once a year or once every couple of years. They are unaware that Applicant works for an American contractor or the specifics of his job. They are also unaware when Applicant is in Afghanistan.<sup>8</sup>

Two of Applicant's brothers live with his parents. They are 20 and 18 years old, and both are in school. The plan is for Applicant's father to apply for visas for them if they are still under 21 years old when his father receives his immigration visa. Applicant has discussed this issue with an attorney and was advised if his father immigrates

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<sup>3</sup> AE C.

<sup>4</sup> Tr. 32-40, 55-58.

<sup>5</sup> Tr. 40-41, 48-49.

<sup>6</sup> Tr. 43.

<sup>7</sup> Tr. 50-51.

<sup>8</sup> Tr. 36-38, 50, 52-54.

before January 2017, these brothers will be able to join their father. If he does not meet that deadline, the 20-year-old will have to apply on his own. This brother knows Applicant works in Afghanistan, but does not know the nature of his business. Applicant does not know what information his 18-year-old brother is privy to. Applicant had a fourth brother, the youngest, but he is deceased. The remaining brother, who is older, lives in Afghanistan and has a taxi and painting business. He is married. He is unaware when Applicant is in Afghanistan or that Applicant works for a U.S. contractor.<sup>9</sup>

Applicant's father-in-law is deceased. His mother-in-law lives in Afghanistan and is in poor health. She lives with her younger son. Applicant's wife contacts her mother about once or twice a month by telephone or Skype.<sup>10</sup>

Applicant is grateful to his adopted country for the opportunities he has been afforded. In 2013, he purchased a house in the United States and paid the total cost with his savings. He testified that when he was working in Afghanistan he saved all of his money. He lived on the military compound and had minimal expenses. This was how he was able to purchase his house. He owns a car and has made financial investments, some were not successful. He has about \$30,000 in savings in the United States. He has no assets in Afghanistan. His parents have a house in Afghanistan that his brothers will inherit. He intends to remain in the United States, raise his family, and take care of his parents.<sup>11</sup>

Applicant provided numerous letters and certificates of appreciation and merit for his service to the combined U.S. and Afghan forces that spanned his years of service. Each letter consistently praises his abilities and willingness to assist the forces. He is characterized as a dedicated and hard worker who is willing to do whatever it takes to assist in accomplishing the mission. He was repeatedly involved in combat operations and faced imminent danger. The most recent letter, from 2016, is from the deputy commander of a task force for whom Applicant served as his interpreter. He stated: "I trust him to not only accurately communicate my thoughts, but even defend my life if required."<sup>12</sup>

A Certificate of Commendation from the U.S. Marine Corps for Applicant's service in 2008 stated in part:

[Applicant] was required to devote countless hours riding with combat logistic patrols, as well as, assisting the personal security detachment during transactions with local national truck drivers. His efforts were vital to ensure that combat logistics patrols were ready to head into enemy

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<sup>9</sup> Tr. 38-40, 55-58.

<sup>10</sup> Tr. 41-43, 60.

<sup>11</sup> Tr. 32, 43-49.

<sup>12</sup> AE A, B.

territory. He continually displayed motivation and enthusiasm that played an integral role in the platoon's safe and successful completion of 20 combat logistics patrols.<sup>13</sup>

A character witness testified on behalf of Applicant. He was described as hard-working, honest, reliable, and loyal to the United States. The witness is aware of Applicant's wife's intention of becoming a naturalized citizen of the United States.<sup>14</sup>

## **Afghanistan<sup>15</sup>**

The United States Department of State warns U.S. citizens against travel in Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. Travel to all areas remain unsafe due to the ongoing risk of kidnapping, hostage-taking, military combat operations, landmines, banditry, armed rivalry between political and tribal groups, militant attacks, direct and indirect fire, suicide bombings and insurgent attacks, including attacks using vehicle-borne or other improvised explosive devices. Attacks may also target official Afghan and U.S. government convoys and compounds, foreign embassies, military installations, and other public areas.

Extremist groups and members of other armed opposition groups are active throughout the country, attacking Afghan and foreign government facilities, with little regard for civilian casualties. According to the State Department's 2015 Country Reports on Terrorism, Afghanistan continues to experience aggressive and coordinated attacks by the Taliban and other insurgent and terrorist groups. Border regions between Afghanistan and Pakistan remain a safe haven for terrorists.

Afghanistan has significant human rights problems that are widespread. They include armed insurgent groups attacks on civilians and killing of persons affiliated with the government; torture and abuse of detainees by government forces; widespread disregard for the rule of law; and little accountability for those participating in human rights abuses; as well as targeted violence and societal discrimination against women and girls.

## **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.

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<sup>13</sup> AE A, B.

<sup>14</sup> Tr. 71-77.

<sup>15</sup> GE 2.

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. Likewise, I have not drawn 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, 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 and has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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 conditions that could raise a security concern and may be disqualifying. I have considered all of them 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;
- (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
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a) and 7(d) require evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition 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 owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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."<sup>16</sup>

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<sup>16</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant's wife is a citizen of Afghanistan. She is a permanent resident of the United States and lives with Applicant and their two American-born children in the United States. Applicant's wife has contact with her mother in Afghanistan. His parents are citizens and residents of the Afghanistan. Applicant is sponsoring both for immigration and his father's visa is in the final stage of processing. His mother's visa is pending. His youngest brother will be included in the process. Whether his 20-year-old brother is also included will depend when the visa is issued. Applicant's older brother and five sisters are citizens and residents of Afghanistan. His sixth sister is a citizen of Afghanistan and resides in Germany with her husband. Applicant has contact with his parents and younger brothers. He maintains some contact with his sisters and older brother.

Terrorist activity, militant attacks, extremist groups, and members of other armed opposition groups are active throughout the country, attacking Afghan and foreign government facilities, with little regard for civilian casualties. It has a poor human rights record with widespread disregard for the rule of law and little accountability for those participating in human rights abuses. Applicant's relationship with his relatives living in Afghanistan creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a), 7(b) and 7(d) have been raised by the evidence.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

- (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 and 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; 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.

Applicant's wife is a permanent resident of the United States. She lives in the United States with their two American-born children. Her status and residence makes it unlikely that Applicant would be placed in a position of having to choose between her and the interests of the United States. AG ¶ 8(a) applies to Applicant's wife.



Applicant is sponsoring his parents to immigrate to the United States. His father's visa is pending and his mother's is in the process. His younger brothers will be included in the process, dependent on their age at the time of approval. Applicant has not seen these family members since 2012, but has more than casual ties with them as he plans on supporting them when they come to the United States and provides them with money for medical purposes.

Applicant has worked for U.S. government contractors and been involved in military operations at different intervals and extended periods since 2002. He moved to the United States in 2006 and became a citizen in 2011. He brought his fiancée, now wife, to the United States. His children were born in the United States. He owns a home, car and has investments. He plans on caring for his parents and brothers when they immigrate to the U.S. His wife has contact with her mother. He has some contact with his siblings. There is no evidence these family members have any unusual contact with the Afghan government. However, the foreign influence concerns are increased because of terrorist and extremist activities in Afghanistan. There is widespread disregard for the rule of law and human rights. I cannot find that it is unlikely that Applicant could be placed in a position of having to choose between the interests of his family and the interests of the United States. I also find that Applicant's contact with his relatives in Afghanistan is not casual. AG ¶¶ 8(a) and 8(c) do not apply.

I have considered all of the evidence, and I find that Applicant's commitment and loyalty to the United States is evidenced through his participation in military combat operations, and he has established a firm footprint in the United States. His substantial assets are all in the United States. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."<sup>17</sup> I find Applicant can be expected to resolve any conflict of interest in favor of the U.S. interests. AG ¶ 8(b) applies to Applicant's wife, mother-in-law and his relatives in Afghanistan.

### **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

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<sup>17</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

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 Guideline 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 is 32 years and has been a naturalized-citizen of the United States since 2011. He has worked for U.S. government contractors since 2002 and has been involved in combat operations. His wife is a permanent resident and his children were born in the United States. He is sponsoring his parents for immigration and his father's visa is pending and his mother's is in the process. He owns a home. He has a car and other investments. Although he has familial ties to Afghanistan they are minimized through his sponsorship for immigration for his parents and younger brothers. I have considered Applicant's service and loyalty to the United States military forces. I am convinced that his loyalty and commitment to the United States is without reservation, and he would protect its interests if an issue were to arise. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence guideline 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:	FOR APPLICANT
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Subparagraphs 1.a-1.f:	For Applicant
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### **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 a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge