



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



In the matter of:

ISCR Case No. 15-06559

Applicant for Security Clearance

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

August 31, 2017

**Decision**

MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On April 29, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and E.<sup>1</sup> The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

On May 22, 2016, Applicant submitted a written reply to the SOR, and requested a decision on the record. (RSOR.) Department Counsel subsequently requested that the case be decided after a hearing before an administrative judge. The case was assigned to this administrative judge on August 2, 2016. The Defense Office of

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<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

Hearings and Appeals (DOHA) first issued a notice of hearing on November 3, 2016, scheduling the hearing for January 4, 2017. Because the Applicant was confused and did not attend the hearing on that date, a second notice of hearing was issued on January 4, 2017, scheduling the hearing for January 6, 2017. The hearing was convened as scheduled.

At the hearing, the Government offered Exhibits 1 through 8, which were admitted without objection. Applicant testified on his own behalf and presented one document, which was also admitted without objection as Exhibit A. The record was left open until January 13, 2017, for receipt of additional documentation. Documents were submitted and have been marked and entered into evidence without objection as Exhibit B.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a summary of the facts, supported by Exhibit 7. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 41 years old. He was born in Afghanistan in 1975, and he moved to the United States in 2004. He became a naturalized United States citizen in 2008. Applicant has been married to his wife since 1999, and they have one daughter, age 9. Applicant's wife was born in Afghanistan, and she and their daughter are both United States citizens. Applicant has been employed by a defense contractor as a Linguist/Interpreter, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 27-29.)

### **Guideline B - Foreign Influence**

The SOR lists five allegations regarding Foreign Influence, under Adjudicative Guideline B. Applicant admitted to the allegations in SOR 1.a through 1.d. He denied SOR allegation 1.e.:

1.a. It is alleged in the SOR that Applicant's father is a citizen and resident of Afghanistan. As reviewed above, Applicant admitted this allegation in his RSOR, and he wrote that his father has no affiliation with any Afghan organization or government agency. He earns his living through the proceeds of some apple gardens that he owns. Applicant further wrote that in the last two years when he was deployed, Applicant

contacted his father three times, and two of those times was to provide him financial support of \$400 to \$500 each time.

At the hearing, Applicant testified that he speaks to his father, who is approximately 65, on average once a year, because of the confidentiality of his employment. He further testified that his father is retired, and he would like to eventually move to the United States. Applicant last saw his father more than 20 years ago. (Tr at 29-31, 44.) Applicant has sent his father some money to help support him, once or twice a year, in an amount of \$500 or less each time. (Tr at 42-43.)

2.b. It is alleged in the SOR that Applicant has two brothers, who are citizens and residents of Afghanistan. Applicant admitted this allegation in his RSOR. He wrote that his brothers have no affiliation with any Afghan organization or government agency. One of his brothers is a civil engineer, and the other is waiting to enter a university. In the last two years, he only spoke to one brother one time, and that was after he was talking to his father on the phone.

During his testimony, Applicant confirmed that he almost never communicates with his brothers, and neither of them has ever been affiliated with the Afghan Government. (Tr at 31-33.)

2.c. It is alleged in the SOR that Applicant has three sisters, who are citizens and residents of Afghanistan. Applicant admitted this allegation in his RSOR. He wrote that his sisters have no affiliation with any Afghan organization or government agency. He has had no contact with them during the last few years.

Applicant testified that two of his sisters are married, and to Applicant's knowledge, none of the sisters or their two husbands is affiliated with the Afghan Government. He has not spoken to any of them in the last two years. (Tr at 33-36.)

2.d. It is alleged in the SOR that Applicant has a mother-in-law, who is a citizen and resident of Afghanistan. Applicant admitted in his RSOR that his mother-in-law is an Afghan citizen, but she has resided in the United States for the past 19 years. His contact has been limited to once in the last three months. His mother-in-law has no affiliation with any Afghan organization or government agency

Applicant testified that his mother-in-law lives very close to him in the United States, and he speaks to her when he is on leave, approximately two times a year. She is about 55, retired and her husband is no longer alive. She has now lived in the United States for more than 20 years, and she has attempted to become a United States citizen on several occasions, but because of her problems with English, she has not been successful. (Tr at 36-37, 46.)

2.e. It is alleged in the SOR that Applicant has two brothers-in-law, who are citizens and residents of Afghanistan. Applicant denied this allegation in his RSOR. He wrote that he has virtually no contact with them, but he has learned through his wife that both of them are now citizens and residents of the United States.

He testified that they have both lived in the United States for more than 20 years, and they work for private companies in the United States. (Tr at 37-38.)

Applicant testified that he has no other family or friends in Afghanistan with whom he keeps in contact. He works in Afghanistan for 6 months translating and spends one month back in the United States. Besides his wife and son, his only relatives in the United States is his mother-in-law with whom he has no infrequent contact. None of his relatives in Afghanistan have come to visit him in the United States. He owns no property in the United States, Afghanistan, or anywhere else, although he does hope to purchase a home in the U.S. Applicant testified that he is totally loyal to the United States. (Tr at 45 -51, Exhibit 1.)

### **Guideline E, Personal Conduct**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, lack of candor, dishonesty or unwillingness to comply with rules and regulations.

2.a. It is alleged in the SOR that in approximately June 2011, while employed in Afghanistan, Applicant assaulted a member the Afghan advisor team. Applicant admitted this allegation in his RSOR. He wrote that an individual with whom he worked was continually disrespectful to him. On one occasion, this individual pushed his chest against Applicant's chest. Applicant reacted by pushing this individual away from him. Applicant further wrote that an investigation was held regarding the incident, but the case was dismissed, and Applicant was not punished or reprimanded. He was ordered to apologize to the other individual, which he did shortly thereafter.

Applicant testified that after he apologized the matter was settled, and nothing further ensued. (Tr at 38-41.) An investigation report by a first lieutenant, United States Marine Corps, dated June 18, 2011, suggests that Applicant allegedly attacked this other worker and choked him with his hands around his throat. This other worker sustained minor injuries, but did not seek medical help. This report was based on what the other worker stated. However, there are other versions of the incident suggesting that the other worker was at fault, and Applicant did not act in an inappropriate manner. Ultimately the matter did not result in a punishment to Applicant's, beside his order to apologize to the other worker. (Exhibit 6.)

### **Mitigation**

Applicant submitted a number of documents in mitigation. They include two positive character letters and a Commander's commendation received by Applicant (Exhibit A) and a packet of supporting documents, which included: a Certificate of Appreciation, a Certificate of Linguistic Training, and several pictures of Applicant with the men with whom he worked. (Exhibit B.)

## **Current Status of Afghanistan**

Afghanistan has been an independent nation since August 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, until the Soviets withdrew in 1989. After the withdrawal a civil war continued, and in the mid-1990s the Taliban rose to power. The Taliban committed massive human rights violations and provided sanctuary to Osama Bin-Laden and Al Quaida. After the September 11, 2001 terrorist attacks the United States forces and a coalition commenced military operations in October 2001, and forced the Taliban out of power and a new democratic government was installed in 2004.

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly frequent, sophisticated, and destabilizing. 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.

## **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 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 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), 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 national security eligibility will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies 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.

Section 7 of Executive Order (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 B, Foreign Influence**

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Disqualifying conditions (a) and (b) are potentially applicable in this case:

(a) contact, regardless of method, 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 classified or sensitive information or technology and the

individual's desire to help a foreign person, group, or country by providing that information or technology;

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country;

(d) counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security;

(e) shared 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;

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and

(i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant has a significant number of close family members, especially his father to whom he has given hundreds of dollars for support, who are citizens and residents of Afghanistan. His ties to the United States are extremely limited to only his wife and son, and also his limited contact with his mother-in-law, who is an Afghan citizen, but does reside in the United States. The evidence is sufficient to raise these disqualifying conditions.

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 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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

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

Because of the strong familial ties to Afghanistan, and the limited contact with the United States, I do not find that any of the mitigating factors are applicable in this case.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16.:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;



(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

Because of the altercation in which Applicant was involved, find that AG ¶ 16 (d) (2) is potentially applicable as a disqualifying condition in this case:

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Because the investigation of the altercation in which Applicant was involved, resulted in two very different versions of the incident, and the evidence does not definitively establish that Applicant was at fault, I find that AG ¶ 17 (f) is applicable and controlling as the mitigating factor in this case.

### **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(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and E in my whole-person analysis. Overall, the record evidence under Guideline B leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Influence security concerns under the whole-person concept.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 1.a:

For 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.

Martin H. Mogul  
Administrative Judge