



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.: 15-08272

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

July 12, 2017

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, and exhibits, I conclude that Applicant has not mitigated the concerns related to foreign influence raised by his mother and two brothers who are citizens and residents of Afghanistan. His request for a security clearance is denied.

**Statement of Case**

On May 5, 2014, Applicant submitted a security clearance application (SF-86). On July 27, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence. (Item 1.) The action was taken under Executive Order 10865 (EO), *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 for Determining Eligibility for Access to Classified Information*.

Applicant answered the SOR on August 15, 2016. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 1, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items and an additional request for Administrative Notice, was mailed to Applicant on September 1, 2016, and received by him on September 24, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant responded to the FORM in a submission dated September 24, 2016. He did not object to Items 1 through 4. Applicant also submitted additional information in his FORM response, to which Department Counsel had no objection. DOHA assigned the case to me on June 5, 2017. Items 1 through 4 are admitted into evidence. Applicant's response to the FORM is marked as exhibit (AE) A and is also admitted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous AG, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Procedural Rulings**

In the FORM, the Government requested I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a six-page summary of the facts, supported by six Government documents pertaining to Afghanistan, marked as Item 5. 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**

The SOR alleged, and Applicant admitted, that his mother and two brothers are citizens and residents of Afghanistan. Those admissions are incorporated into the following facts:

Applicant is 33 years old. He is unmarried and has no children. (Item 3.) He was born in Afghanistan. He immigrated to the United States in March 2009, under a special immigrant visa, which he qualified for due to his five years of service supporting U.S.

military forces as a linguist. He was naturalized as a U.S. citizen on April 3, 2014. He seeks a security clearance in connection with his work as a linguist. (Item 4.)

Applicant is the youngest of six siblings. He has four brothers and one sister. One brother is a citizen of Afghanistan and resident in Hungary; one brother is a citizen of Afghanistan and resident in Austria; and two brothers are citizens and residents of Afghanistan. His sister is a citizen and resident of Canada. Applicant's eldest brother, who lives in Kabul, Afghanistan, is medically disabled and has never been employed. His other brother in Afghanistan works as a car dealer. Both brothers reside with Applicant's mother. Applicant communicates with his brothers and sister on a weekly basis.

Applicant's mother is also a citizen and resident of Afghanistan. His father is deceased. Applicant's mother is a "housewife" and cares for her disabled son. Applicant talks to his mother on a daily basis. (Item 2.) Between 2011 and 2012, Applicant sent a total of \$160,000 to his mother in Afghanistan to help her buy a house and improve her living conditions. (Item 4.) He has not provided additional funds since that one-time gift. (AE A.) He acquired the funds by saving his salary, which he documented for the record. (AE A.)

Applicant noted:

I'm certain you will agree, I have no control over Afghanistan. So to be held accountable for issues that are beyond my control seems to be unreasonable. Also, I'd like to state that I have honorably and professionally served as a contractor and employee of the United States since 2004 with no evidence of exploitation or wrong doing during which time I had relations with my family who are from and live in Afghanistan. Finally, I agree, there is potential for a conflict of interest. I argue that there has always been a potential for a conflict of interest since my employment started in 2004. I will also reiterate that the potential for a conflict of interest is an issue that is beyond my control. The facts of giving my mother money and maintaining connection with my family does not change the potential for a conflict of interest. (AE A.)

The U.S. Department of State has issued a travel warning with respect to Afghanistan. It notes that travel to all areas of Afghanistan is unsafe due to the ongoing risk of kidnapping, hostage taking, military combat operations, landmines, banditry, suicide bombings, and insurgent attacks. Attacks may target official Afghan and U.S. governmental convoys and compounds. Extremists associated with Taliban networks, the Islamic State, and Levant are active throughout Afghanistan. Widespread human rights abuses are reported. (Item 5.)

## **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 useful 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 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, an "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 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 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 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 *a/s/o* 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. Two 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; 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 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.

Applicant has close connections to his mother and two brothers, who are citizens and residents of Afghanistan. He contacts his mother on a daily basis and his brothers weekly. Further, there is an articulated heightened risk associated with having ties to family members in Afghanistan, due to the activities of terrorist organizations and insurgents operating within its borders. 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.

None of the above conditions are mitigating in this instance. Applicant admitted that a potential for a conflict of interest was present due to his ties to his family in Afghanistan. He is in close contact with them, communicating with his mother and brothers frequently. He failed to demonstrate deep and longstanding loyalties to the United States. While he is credited for his years of service to the United States as a linguist, the record contains little information on assets, or physical or emotional bonds to the United States. Without more information, it cannot be determined that Applicant would resolve any conflict of interest in favor of the U.S. interest.

### **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.

According to 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 applicable guidelines and the whole-person concept. Applicant served honorably as a linguist for five years. However, the record lacks information to support a finding that he would resolve any conflicts of interest in favor of the United States. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for Foreign Influence.

### **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 and 1.b:	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 national security eligibility and a security clearance. National security eligibility is denied.

Jennifer I. Goldstein  
Administrative Judge