



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-08842  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Douglas Velvel, Esq., Department Counsel  
For Applicant: *Pro se*

11/18/2016  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for a security clearance is denied.

**Statement of the Case**

On May 3, 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 May 29, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 4, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 16, 2016. I convened the hearing as scheduled on October 19, 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 October 27, 2016.

### **Request for Administrative Notice**

Department Counsel submitted GE 2, 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 is 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 the allegations in SOR ¶¶ 1.b, 1.c, 1.e, and 1.f. He denied SOR ¶¶ 1.a and 1.d. 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 received the equivalent of a bachelor's degree from a university in Afghanistan in 2008. He became a naturalized citizen of the United States in 2013. He emigrated from Afghanistan through a special immigration program for translators. He started the process in 2007 and was granted a visa in 2008 when he came to the United States.<sup>1</sup>

On April 29, 2014, Applicant completed a security clearance application (SCA). In it he disclosed that he worked for his present employer on a previous occasion from September 2010 to December 2010. He stated: "During the additional period of activity I was at Camp [A] but had to resign prior to deployment due to a family emergency. I was there less than 90 days."<sup>2</sup> His job title was linguist.

Since April 2014, Applicant has worked as a linguist for his current employer, a government contractor. Applicant was unemployed from July 2013 to April 2014. He worked for an Afghan company, owned by a U.S. citizen, as a program manager from October 2012 to June 2013 in Afghanistan and left when the contract ended. He was employed from October 2011 to October 2012, with a different contractor as a program manager in Afghanistan and again left when the contract ended. He was unemployed from August 2011 to October 2011. Applicant disclosed on his SCA that he was living with his parents in Afghanistan from July 2011 to February 2014.<sup>3</sup> He worked part-time as a language instructor for a government contractor in the United States from January 2011 to July 2011. He was unemployed from August 2009 to September 2010. He

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<sup>1</sup> Tr. 21.

<sup>2</sup> GE 1 at page 15.

<sup>3</sup> GE 1 at page 11.

worked in the retail industry from December 2008 to August 2009. He resigned because he did not like the job. He was employed part-time for the month of January 2009 as a role player for a government contractor. He was unemployed from July 2008 to November 2008. Applicant worked as a linguist from January 2004 to July 2008 in Afghanistan for a government contractor.<sup>4</sup>

Applicant's marriage was arranged by his father, and he wed in October 2012 to an Afghan citizen and resident. At the time he completed his SCA, Applicant disclosed his wife maintained her residence in Afghanistan. He separated from his wife in 2013, and he stated they divorced in June 2015. However, in order for him to receive his official divorce certificate, the Afghan judge presiding over the divorce proceedings required Applicant's physical presence. Applicant testified that because he was working for a federal contractor in Afghanistan at the time, he was not permitted to leave the compound. Applicant gave his brother a power-of-attorney to help him complete the official divorce paperwork on his behalf. His brother did so, and the official divorce certificate was issued in October 2016. Applicant testified that his last contact with his wife was in October 2014. He acknowledged that she is aware that he is an American citizen and that he worked for the U.S. government contractor. Applicant has not had any contact with his wife's parents since October 2014. When he was married he had annual contact with his in-laws, but he no longer maintains any contact since his divorce.<sup>5</sup>

Applicant does not own real property in the United States or Afghanistan. He does not have any banks accounts in Afghanistan. He estimated his U.S. bank account has between \$70,000 and \$80,000. He has no other financial interests in the United States.<sup>6</sup>

Applicant testified that he did not know how many siblings he had. He stated he never counted how many siblings he had, which is why he did not know. He admitted that at one time he lived with them, but his life and their lives are very different now. In his SCA, he disclosed that he had five sisters and two brothers, all of whom are citizens and residents of Afghanistan. He has contact with the brother who helped him with his divorce. He lives in the province where Applicant is located. He is married and has a child. Applicant talks to him on the phone every month or couple of months. His brother works for a local telecommunications company. He previously worked for the Afghan ministry of labor. His last contact with this brother was about four months ago on the occasion of a special feast that occurs twice a year. In his SCA, Applicant disclosed he had monthly telephonic and electronic contact with his brother.<sup>7</sup>

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<sup>4</sup> Tr. 23-26, 43-44; GE 1.

<sup>5</sup> Tr. 18-20, 37-38, 48-49; AE B.

<sup>6</sup> Tr. 26-27, 46, 55-55.

<sup>7</sup> Tr. 27-28, 32-35, 48; GE 1.

Applicant testified that he was at his family's home in October 2014 when he went back to deal with marital problems with his wife. He stated he has not had contact with any of his sisters since this visit. In his SCA, he disclosed that he lived with his parents in Afghanistan from July 2011 to February 2014. He also lists that all of his siblings and his stepmother live at the same address. In his answer, Applicant stated that he has chosen to not maintain contact with his family and friends, and he has substantially minimized his contact with them. He testified he only speaks with his parents occasionally. He contacts them on special days, such as holidays. If they have medical concerns he will contact them by Skype or call his brother on Skype and talk with his parents. He estimated he speaks with his mother every six months. He is presently angry with his father and does not speak to him. In his April 2014 SCA, Applicant indicated he spoke with his mother, father, and all of his sisters by telephone monthly.<sup>8</sup> Applicant does not provide financial support to any family member.<sup>9</sup>

Applicant testified that his other brother worked on the same base as he did at one time. It is unknown where his brother now works. This brother is not an American citizen, but has applied for a special immigrant visa, and he is waiting for an interview through the U.S. embassy. His brother sometimes needs advice on school or the visa process. In his SCA, he indicated he had monthly telephonic and electronic contact with his brother. He stated that his family does not know about his job or his location in Afghanistan. He stated:

It's not that I hide . . . from them . . . any risk or anything else. It's just for my safety and for my job I understand and I understand the nature of my job that I should keep my distance with people that they're not supposed to know about my job or location.<sup>10</sup>

When asked why he feels he needs to keep this information from his family, he stated:

Because of the concerns that there are here. Especially my mom it's personal. My mom would not accept that I would come back to Afghanistan and work somewhere that my life would be in danger or something like that. But like I told you it's just my job priorities also that I want to keep that distance between my family and keep my professional life from my social life or personal life separated.

And also the relationship with my mom, like I said, I talk to her occasionally. With my dad I don't – we don't speak anymore. The last time I talked to him was January 2016, which it turned out the whole dispute that we have - disagreement that we had was about my marriage. That he

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<sup>8</sup> Tr. 28, 36-37; GE 1; Answer to SOR.

<sup>9</sup> Tr. 35.

<sup>10</sup> GE 1; Tr. 29.

arranged that marriage. It was a mistake to me. But it was my father who did that.<sup>11</sup>

Applicant works on a base in the same province where his parents live, but in a different district. Applicant's father has two wives. His second wife is Applicant's mother. Applicant testified that he does not have regular contact with his father's first wife, but did have contact with her in October 2014. He disclosed in his SCA that he had monthly contact with her by telephone. In his SCA, he disclosed that she lives at the same address as his family.<sup>12</sup>

Applicant's father retired from the Afghan Army in 2004. Applicant was unaware of how many years his father served in the Army, but he remembered his father was in the Army while he was growing up. His father was twice imprisoned by the Taliban. His father was not part of the U.S. supported Afghan Army because he was too old. His father is now a teacher and does not receive a military pension.<sup>13</sup>

Applicant has two friends who are Afghan citizens and residents that work for an international agency in Afghanistan. He testified he does not maintain contact with them. He limits his contact with non-Americans. He has cousins on both his father's and mother's side of the family. He does not have any contact with them. He testified he chose not to have a relationship with these family members.<sup>14</sup>

Applicant provided two letters of support. One is from a military commander (colonel) and another from a senior officer (lieutenant colonel). Both noted that they had only known Applicant for the past six months. Both stated that they verified through records and third party accounts that Applicant served with the U.S. forces engaged in combat operations. They had witnessed Applicant's steadfast work ethic and devotion to duty. They concluded that Applicant is a proud American who takes security measures seriously. They recommended he be granted a security clearance.<sup>15</sup>

## **Afghanistan<sup>16</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

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<sup>11</sup> Tr. 29-30.

<sup>12</sup> Tr. 31-32, 44- 45; GE 1.

<sup>13</sup> Tr. 40-42.

<sup>14</sup> Tr. 38-39, 48-49.

<sup>15</sup> AE A, C.

<sup>16</sup> GE 2.

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.

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; 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.

AG ¶ 7(a) requires 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>17</sup>

Applicant's parents, stepmother, five sisters, and two brothers are citizens and residents of Afghanistan. On his 2014 SCA, Applicant disclosed he had regular monthly contact with all of these family members. He testified since October 2014, he has less contact with his immediate family. He continues to maintain contact with both brothers and his mother. He testified that since October 2014, he has limited contact with his sisters and he is angry at his father so he has not spoken to him. Despite Applicant's testimony to distance himself from his family, he obviously maintained his relationship with his family members evidenced through his disclosures on his SCA. The frequency of his contact with his family may have changed after October 2014, but it does not negate the relationships. In particular, he acquiesced to his father's wishes when he married through arrangement in 2012. He maintains his relationship with his brothers, one who acted as his power-of-attorney so Applicant could get his divorce certificate. Applicant testified he has contact with his family on special occasions or if there are medical concerns.

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 immediate family in Afghanistan creates a heightened risk of foreign exploitation, inducement,

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<sup>17</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).



manipulation, pressure or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Applicant's ex-wife and her parents are citizens and residents of Afghanistan. Since his separation and divorce, Applicant does not maintain any contact with them. Applicant does not have contact with his extended family and friends. There is no heightened risk and no conflict of interests has been raised with regards to any of them. AG ¶¶ 7(a) and 7(b) do not apply to them.

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 maintained regular contact with his family prior to October 2014. He lived in the family home from July 2011 to February 2014. He still has contact with his mother every six months, on special occasions, and when there are medical concerns. The evidence supports that he maintains regular contact with his brothers. Applicant testified he has not spoken with his father because he is angry with him. This does not negate his familial relationship. Applicant participated in a marriage arranged by his father, which shows a relationship with his father, even if it is fractured at the present. He testified that his mother would not understand why he has not contacted her if she knew that he is in the same province, which also lends support to the safety concerns Applicant has for his family in Afghanistan. Applicant had regular contact with his stepmother up to October 2014. Applicant may be attempting to distance himself from his family, but I cannot find his contact with them is casual and infrequent and that it is unlikely that his familial relationships could create a risk for foreign influence or exploitation. AG ¶ 8(c) does not apply.

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. AG ¶ 8(a) does not apply.

Applicant became a United States citizen in 2013. He was granted a special immigration visa because he worked as a translator for the U.S. government. All of his relatives live in Afghanistan. After he became a United States citizen, he went back to Afghanistan and lived with his parents from July 2011 to February 2014. The evidence is insufficient for me to conclude there is no conflict of interest, either because Applicant's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or Applicant has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interests in favor of the U.S. interests. AG ¶ 8(b) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all 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 those guidelines, but some warrant additional comment.

Applicant is a 32-naturalized-citizen of the United States. He has significant familial ties in Afghanistan. He lived with his entire immediate family in their compound in Afghanistan from July 2011 to February 2014. I have considered Applicant's service and loyalty to the United States military forces. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge