



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



In the matter of: )  
)  
) ISCR Case No. 15-08019  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

05/14/2018

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**Decision**

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CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant mitigated security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 16, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment as a linguist for a defense contractor. Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on June 13, 2014. After reviewing the e-QIP and result of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On May 5, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on May 31, 2016, admitting the nine allegations under Guideline B. The allegations detailed concern about his family members, friends, and property in Afghanistan. Department Counsel was prepared to proceed on February 27, 2017, and I was assigned the case on September 26, 2017. DOD issued Applicant a notice of hearing on February 12, 2018, for a hearing on March 22, 2018. I convened the hearing as scheduled. The Government's two exhibits (GX 1 and 2) were admitted into the record without objection. Applicant did not present any exhibits. I received the transcript of the hearing on April 3, 2018.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGS) which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs, and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.

### **Procedural Issues**

Department Counsel requested that I take administrative notice of certain facts concerning Afghanistan, and provided relevant United States Department of State documents. (GX 3) I will take administrative notice of facts concerning Afghanistan as noted in my Findings of Fact.

Applicant was advised at the hearing that the summary of the Personal Subject Interview (PSI) with an OPM investigator (GX 2) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. Applicant did not object to the admissibility of the PSI summary. (Tr. 12-13) I will consider information in the PSI in my decision.

### **Findings of Fact**

After a thorough review of the record, I make the following findings of fact. Applicant was born in Afghanistan in 1978 and is 40 years old. He completed his studies for a bachelor's degree at a university in Afghanistan in 2003, and received his diploma from that university in 2008. He is presently studying at a university in the United States for a bachelor's degree in accounting, which he expects to receive in December 2018. (Tr. 14-15; GX 1, e-QIP, dated May 16, 2014)

Applicant arrived in the United States in October 2008, and became a United States citizen in February 2014. He is not married but is engaged to a woman who was born in Afghanistan. She came to the United States in 2009 and became a U.S. citizen in 2015. She recently completed her college education and is working as a medical

assistant. She is waiting to enter medical school. Applicant and his fiancée live full time in the United States. (Tr. 15-16; 24-25)

Applicant has been employed as a technician and inspector for a United States engineering and construction company since November 2016. He previously worked as a linguist for a contractor in Afghanistan from 2003 to 2005. His assignments included working at the Afghan military training center, at the Presidential palace for the Afghan Army, and then for the U.S. Special forces at a forward operating base near the border with Pakistan. The forward operating base was in a location that is considered a dangerous area. He was not directly involved in combat action but was nearby when bombs and ordnance exploded. He became a linguist because he was seeking employment. He has been recruited by a defense contractor to return to Afghanistan as a linguist if cleared for eligibility for access to classified information. He was never in the Afghan military or employed by the Afghan government. He visits Afghanistan about every two or three years, mostly for special occasions. He stays approximately 10 days, usually at his mother's house. His last visit was in November 2017 for his sister's wedding. His last visit before November 2017 was in July 2015. (Tr. 16-22, 27-28)

The SOR alleges his fiancée is a citizen of Afghanistan (SOR 1.a); his two roommates are citizens of Afghanistan (SOR 1.b); his mother is a citizen of Afghanistan (SOR 1.c); three sisters are citizens and residents of Afghanistan and one sister works for an Afghan government ministry (SOR 1.d); another sister is a citizen of Afghanistan (SOR 1.e); his mother-in-law is a citizen of Afghanistan (SOR 1.f); his brother in law is a citizen and resident of Afghanistan (SOR 1.g); he has foreign contacts who are citizens and residents of Afghanistan (SOR 1.h); and he has property in Afghanistan worth approximately \$28,000 (SOR 1.i).

Applicant established that his fiancée is now a United States citizen (SOR 1.a). He no longer has any roommates. (SOR 1.b) He is still in contact with them, but they have been citizens and residents of the United States since 2015. (Tr. 31-32)

Applicant's mother is a resident and citizen of Afghanistan (SOR 1.c). She is approximately 57 years old, and a homemaker. She owns a house that she rents out, and rents a smaller house to stay in. He has monthly contact with her by phone. He last saw her in November 2017 when he stayed with her and attended his sister's wedding. His mother never visited him in the United States. He does not know if he will inherit anything from his mother since he told the family that he wants his sisters in Afghanistan to get his share of any property. (Tr. 32.33)

Applicant has three sisters who are citizens and residents of Afghanistan (SOR 1.d). One sister is 33 years old. He has monthly contact with her by phone and last saw her in November 2017. She has no children and is married to a dentist. He talks to her approximately monthly by phone. Her husband is 37 years old; a citizen and resident of Afghanistan; has his own dental practice; and lectures at an Afghan medical school (SOR 1.g). He attended a medical convention in the United States, but Applicant did not see him during his visit. Applicant last saw him in Afghanistan in November 2017. He

talks to him about quarterly by phone or text. Another sister is 31 years old. He has monthly contact with her by phone. She is an engineer and works as an advisor for the Afghan finance ministry. She married in November 2017 and has no children. His last trip to Afghanistan was to attend her wedding. Her husband has his own small construction company. Applicant does not believe he has any contracts with the Afghan government. Applicant's third sister in Afghanistan is a law student at the American University in Afghanistan. She is not married; he talks to her monthly by phone; he last saw her in November 2017; and she has never visited him in the United States. (Tr. 33-42, 48-50)

His fourth sister is a full time citizen and resident of the United States (SOR 1.e). She is 38 years old; came to the United States in September 2008; and became a United States citizen in 2015. At the time the SOR was drafted, this sister was living in the United States but was not yet a United States citizen. She is married and her husband was a medical doctor in Afghanistan. He became a United States citizen about the same time Applicant's sister became a U.S. citizen. He now teaches at the Defense Language Institute. They have two children who are students now residing with their grandparents in Afghanistan. He does not know what they are studying. He has no contact with them, and last saw them in November 2017 when he attended his sister's wedding. (Tr. 42-46)

His mother in law came to the United States in 2009, and became a United States citizen in 2015 (SOR 1.f).<sup>1</sup> She was an engineer in Afghanistan. As far as Applicant knows, she never worked for the Afghan government. He has only limited contact with her through his fiancée. (Tr. 46-48)

He sees acquaintances when he visits Afghanistan (SOR 1.h). He does not have frequent contact with them at any other time. He interprets the term acquaintance to be just people he knows and sees when he visits Afghanistan. His sister's mother-in-law and father-in-law are retired people that he occasionally sees when visiting Afghanistan but he has no other contact with them. (Tr. 50-52)

Applicant purchased property in Afghanistan in 2006 (SOR 1.i), and sold it in 2015. It was sold at a price calculated in Afghan money, so he does not know how much he received for the property in U.S. dollars. He used the funds to buy rental property in the United States. He no longer owns any property in Afghanistan. (Tr. 24-27)

Applicant's present salary is \$17 an hour and he usually works 40 hours a week. He can work overtime at time-and-a-half. Applicant owns his house in the United States valued at approximately \$200,000. He also has two rental properties that are each valued from \$170,000 to \$180,000. He is not sure of the amount of equity that he has in the properties. He does not have a retirement account. He has no foreign income. He believes his net worth in the United States is approximately \$500,000. (Tr. 21-24)

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<sup>1</sup> Since Applicant is not married, the mother in law referred to in this allegation must be the mother of his fiancée.

Afghanistan has been an independent nation since 1919, and it was a monarchy until a military coup in 1973. Following a second military coup in 1978, a Marxist government emerged. In December 1979, the Soviet Union invaded and occupied Afghanistan, but they were resisted by the mujahedeen. The Soviet Union withdrew in February 1989 pursuant to an agreement signed by Pakistan, Afghanistan, the United States, and the Soviet Union. The mujahedeen were not a party to the agreement and refused to abide by it. The result was a civil war among several factions, including the Taliban. By the end of 1998, the Taliban controlled most of Afghanistan, committed atrocities against minority populations, and provided sanctuary to terrorist organizations. U.S. military forces, along with forces from a coalition partnership, forced the Taliban out of power by November 2001. With the assistance and support of the United States, a new democratic government took office in 2004.

Afghanistan formed a democratic government in 2004. The United States and its coalition partners have over 50,000 troops serving in Afghanistan assisting the Afghan government in maintaining peace and stability in the country. Even though progress has been made since then, Afghanistan faces many challenges including defeating terrorists and insurgents, recovering from decades of civil strife, and rebuilding an economy and infrastructure. The Taliban insurgency has continued with frequent, sophisticated, dangerous, and destabilizing activities in spite of United States and coalition military operations. Civilians continue to bear the brunt of the violence. The Taliban continues to maintain momentum in spite of losses to their leadership. Armed conflict has spread to almost one-third of the country. The lack of security in many areas and generally low government capacity and competency has hampered efforts at self-governance and economic development. There is continued government corruption and substantial drug trade.

Afghanistan's human rights record is generally poor with extrajudicial killings, torture, poor prison conditions, official impunity, prolonged pretrial detention, restrictions on freedom of press and religion, violence against women, sexual abuse against children, and human trafficking. Its poor human rights record is due to the continuing insurgency, the weak government, and ongoing recovery efforts from two decades of war. In spite of efforts by the United States and the government of Afghanistan, it continues to be a violent, unsafe, unstable country. The weak government and internal instability have enabled hostile states, non-state actors, terrorists, and insurgents to continue operating in Afghanistan, including groups hostile to the United States. Insurgents use narcotics trafficking and kidnapping to finance their military and technical capabilities. Suicide bombing attacks continue to inflict casualties. The Taliban has strengthened its activities because of Pakistan funding sources, the drug trade, and kidnappings. The Taliban insurgent operations result in numerous attacks and deaths targeted at non-government organizations, journalists, government workers, and United Nations workers. There are militant attacks by rockets, vehicle-borne explosive devices, and suicide bombing, even in the capital city, Kabul. The United States Department of State classifies the situation in Afghanistan as a critical security threat to United States citizens. (Item 3)

## **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 must be considered 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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.

## **Analysis**

### **Foreign Influence**

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. interest 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 interests 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 associate with a risk of terrorism. (AG ¶ 6)

Applicant has immediate family members who are citizens and residents of Afghanistan. Applicant's mother, three sisters, mother-in-law, brother-in-law; and some acquaintances have been citizens and residents of Afghanistan all of their lives. His contact with these family members is through phone calls and occasional visits to Afghanistan.

There are widely documented safety issues for residents of Afghanistan because of terrorists and insurgents. Applicant has voluntarily shared in those dangers on behalf of the United States forces while employed as an interpreter and linguist. He is willing to serve again and share in those dangers. Afghanistan is not a stable country and there is a significant threat of violence and terrorism. In spite of his limited contact with his family members, the family members in Afghanistan are a security concern because of violence and instability raising the following Foreign Influence Disqualifying Conditions under AG ¶ 7:

- (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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern is not limited to countries hostile to the United States. The U. S. 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 U. S. Even friendly nations can have profound

disagreements with the U. S. over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the U. S., especially in economic, scientific, and technical fields. The nature of a nation's government, its relationship with the U. S., and its human rights record are relevant in assessing the likelihood that an Applicant is at risk of coercion, persuasion, or duress.

Applicant has contact with family members who are residents and citizens of Afghanistan. Afghanistan has experienced dangerous, destabilizing terrorist's activities, an increase in violence against civilians, a general lack of security, and a poor human rights record. There is a growing sense of violence creating unsafe and unstable conditions. The U. S. Department of State issued a travel warning for U.S. citizens based on terrorist activities and an inability to provide security. These factors place a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant.

I considered Foreign Influence Mitigating Conditions under AG ¶ 8:

(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; and

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

There is a rebuttable presumption that a person has ties of affection for or obligation to immediate family members. Applicant has contact with his family member in Afghanistan by telephone and visits. He attended his sister's wedding recently and stayed with his family. These facts establish a close and continuing relationship between Applicant and his family members in Afghanistan. His level of contact is not casual or infrequent, and indicates that Applicant's sense of loyalty to the family members is high rather than minimal.

Applicant's ties and sense of loyalty to the U. S. are extensive. He worked in Afghanistan as a linguist for U.S. Forces for over two years in 2003 to 2005. He came to the United States in November 2008, and became a U. S. citizen in February 2014. He



has almost completed his studying at a U. S. university for a bachelor's degree in accounting. While most of his immediate family members are in Afghanistan, he does have a sister, brother-in-law, fiancée, and former roommates who are residents and citizens of the U. S. He no longer owns property in Afghanistan. All of his assets are in the United States.

Applicant's family members in Afghanistan can place him in a position to have to choose between the interests of the family members and the interests of the United States. The passage of time has shown that many of the family members mentioned in the original SOR allegations about Afghan residency and citizenship are now U. S. citizens and residents. Even though his family members are ordinary citizens, the situation in Afghanistan is such that through them Applicant can be vulnerable to exploitation, pressure, or inducement to provide protected information. However, his connection to and loyalty to the U. S. is so deep and longstanding that he can be expected to resolve any conflict of interest in favor of U. S. interests. Accordingly, Applicant has met his heavy burden to show that his relationships with his family members in Afghanistan is not a security concern. I conclude Appellant has mitigated security concerns for foreign influence.

### **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 the 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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information. I considered that Applicant has worked as a linguist for U.S. Forces in Afghanistan for over two years with no reported security issues.

The presence of Applicant's immediate family members and other relatives in Afghanistan creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion on Applicant. However, Applicant served as a linguist for over two years in Afghanistan. He has volunteered to return for another tour as a linguist. He is willing to continue to serve and risk his life as part of his duties on behalf of U.S. combat forces in Afghanistan. He is fully aware of the risks to himself. All of these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. His honorable service as a linguist weighs heavily towards approval of his security clearance.

These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. The protection of the national security is the paramount consideration. For all these reasons, I conclude Applicant has mitigated foreign influence concerns based on his family members in Afghanistan. Access to classified information is granted.

### **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

Subparagraphs 1.a – 1.i: For Applicant

### **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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge