



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



In the matter of: )  
 )  
 [NAME REDACTED] )  
 ) ISCR Case No. 16-02229  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Department Counsel  
For Applicant: *Pro se*

10/20/2017  
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**Decision**  
\_\_\_\_\_

BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 25, 2016 Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken under Executive Order (EO) 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 implemented by the DOD on September 1, 2006.

On December 17, 2016, Applicant responded to the SOR, and he requested a hearing before an administrative judge. The case was assigned to me on June 2, 2017. On August 2, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a

notice of hearing, scheduling the hearing for August 24, 2017.<sup>1</sup> I convened the hearing as scheduled. Government Exhibits (GE) 1-4, Hearing Exhibits (HE) I-II, and Administrative Notice (AN) I were admitted without objection. Applicant and three witnesses testified, and he presented several documents, which were admitted into evidence as Applicant Exhibits (AE) A-BB without objection. I received the hearing transcript (Tr.) on September 7, 2017.

### **Findings of Fact**

The SOR alleges foreign influence security concerns based on Applicant's relatives in Afghanistan. Applicant admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant was born in Afghanistan in 1983. Shortly after his birth, Applicant and his family fled to Pakistan due to the Soviet invasion and lived in Pakistan from 1983 to June 2003. Applicant served as a linguist for U.S. military and government personnel in Afghanistan from April 2004 to June 2008. Based upon his service to the United States, Applicant received his U.S. permanent-residency status in about December 2008. He then lived in the U.S. for about six months. In July 2009, Applicant resumed his employment as a linguist serving U.S. military and government personnel. He has spent most of the last 13 years as a linguist in combat zones in Afghanistan. He became a naturalized U.S. citizen in January 2014.<sup>2</sup>

Applicant's parents, wife, two brothers, four sisters, and mother-in-law are citizens of and reside in Afghanistan. Applicant met and married his wife in September 2013. They have three small children, who are dual citizens of the United States and Afghanistan and reside with Applicant's wife in Afghanistan. Applicant's wife has U.S. permanent-residency status. While working in Afghanistan, Applicant visits his family on a monthly basis. He provided significant financial support to his siblings and parents in the past, but now provides financial support only to his wife and children. From his earnings as a linguist, Applicant has saved approximately \$400,000 and is actively house-hunting in the United States with the intention of moving his wife and children to the United States in the near future.<sup>3</sup>

Applicant's father is retired, having served as a clerk for the Afghanistan government after the Taliban was removed from power. Applicant has two brothers who are citizens of and reside in Afghanistan. One brother is self-employed and the other

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<sup>1</sup> With the notice of hearing, Applicant received a memorandum from the DOHA Chief Administrative Judge notifying all applicants that, although the SOR referenced the adjudicative guidelines implemented by the DOD on September 1, 2006, all DOHA Administrative Judges are required to apply the revised adjudicative guidelines (AG) effective as of June 8, 2017, pursuant to Security Executive Agent Directive 4 (SEAD 4).

<sup>2</sup> GE 1-4.

<sup>3</sup> GE 1, 4; AE E.

brother sells jewelry. Neither brother is associated with the government or military in Afghanistan, and none of Applicant's female relatives have ever been employed.<sup>4</sup>

Applicant has two brothers who reside outside of Afghanistan. One brother is a citizen of and resides in the United States, having formerly served as a linguist for the U.S. military in Afghanistan. The other brother is a citizen of and resides in the United Kingdom, and he works for a private company.<sup>5</sup>

Three witnesses testified as to Applicant's service as a linguist for U.S. government and military personnel in Afghanistan. I found all three witnesses' testimonies sincere, credible, and compelling. Two highly-ranked and highly-decorated U.S. military officers, each with over 30 years of military service, described their interactions with Applicant while serving in combat zones in Afghanistan. Both officers believed they and their troops survived their deployments in Afghanistan due to the trustworthiness, reliability, good judgment, and bravery of Applicant. Applicant served as a linguist for the U.S. military in combat environments, including at one point carrying a wounded U.S. soldier for medical evacuation during a firefight. Both officers have maintained close contact with Applicant for nearly a decade and consider him as close as a sibling.<sup>6</sup>

The third witness served as a U.S. foreign service officer for nearly 30 years. Applicant had served as his interpreter in Afghanistan, and they have remained in close contact for more than a decade. The witness entrusted his life to Applicant on many occasions in dangerous environments in Afghanistan, and he has absolute trust in Applicant.<sup>7</sup>

Applicant also submitted 16 letters of recommendation from U.S. military and government personnel and 11 certificates commemorating his service to the U.S. military in Afghanistan. These references emphasized the challenging and dangerous environment, Applicant's exemplary character, and that U.S. military and government personnel unequivocally entrusted Applicant with their lives.<sup>8</sup>

### **Administrative Notice**

I have taken administrative notice of the following facts concerning Afghanistan:

The U.S. State Department warns U.S. citizens against travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. Travel to all areas of Afghanistan remains unsafe due to the ongoing risk of

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<sup>4</sup> GE 1, 2, 4.

<sup>5</sup> GE 4.

<sup>6</sup> Tr. 42-62, 80-81.

<sup>7</sup> Tr. 62-72.

<sup>8</sup> AE A-D, F-BB.

kidnapping, hostage-taking, military combat operations, landmines, banditry, armed rivalry between political and tribal groups, militant attacks, direct and indirect fire, and suicide bombings and insurgent attacks.

Afghanistan continued to experience aggressive and coordinated attacks by the Taliban, including the Haqqani Network and other insurgent and terrorist groups. The border region of Afghanistan and Pakistan remains a safe haven for terrorists.

The U.S. Department of State reported that the most significant human-rights abuses in Afghanistan were widespread violence, armed insurgent groups' attacks on civilians and killing of persons affiliated with government, torture and abuse of detainees by government forces; widespread disregard for the rule of law, and little accountability for those who conduct human rights abuses.<sup>9</sup>

### **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 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 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."

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." The applicant 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

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<sup>9</sup> AN I.

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 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 under this guideline is set out in AG ¶ 6 as follows:

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.

“The United States has a compelling interest in protecting and safeguarding [sensitive] 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>10</sup> The nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. “An applicant with family members living in a country hostile to the U.S. has a very heavy burden to show that they are not a means through which the applicant can be subjected to coercion or exploitation.”<sup>11</sup>

One disqualifying condition under this guideline is relevant to this case:

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

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<sup>10</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>11</sup> ISCR Case No. 11-12659 at 3 (May 30, 2013). See, e.g., ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 7(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.

To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's contacts with his family members in Afghanistan. Given the activities of several terrorist organizations within Afghanistan and the human-rights abuses committed by both the terrorist organizations and the Afghani government forces, the Government has established the requisite "heightened risk." Applicant's relationships with his relatives in Afghanistan create a potential conflict of interest. Therefore, AG ¶¶ 7(a) and 7(b) apply.

The following mitigating conditions under this guideline are potentially relevant:

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;

AG ¶ 8(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 interest in favor of the U.S. interest; and

AG ¶ 8(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.

None of Applicant's family members is employed by or associated with the government or military in Afghanistan; however, significant security concerns remain due to the activities of terrorist organizations within Afghanistan. Moreover, Applicant maintains close relationships with his relatives in Afghanistan. AG ¶¶ 8(a) and 8(c) do not apply.

Security-clearance determinations are predictive judgments as to whether an individual will safeguard classified information. The DOHA Appeal Board has identified "an exception in Guideline B cases in which applicants demonstrate that they have made significant contributions to national security in dangerous, high-risk

circumstances.”<sup>12</sup> In this case, Applicant demonstrated his significant contributions to national security while serving in high-risk combat environments over most of the last 13 years. U.S. military personnel have repeatedly and unreservedly entrusted Applicant with their lives. Several U.S. military personnel have maintained relationships with Applicant and consider him a member of their own families. The witnesses’ testimonies and the 16 letters of recommendation were particularly compelling in their support of Applicant’s character and service on behalf of the United States. Notwithstanding Applicant’s own immediate family members in Afghanistan, he has forged deep and longstanding relationships with U.S. government and military personnel. The depth and breadth of Applicant’s relationships in the U.S. are such that he can be expected to resolve any conflict of interest in favor of the U.S. interest, should any conflict arise. AG ¶ 8(b) applies. Applicant’s deep and longstanding relationships in the U.S. mitigate the foreign influence security concern triggered by his contacts with family members in Afghanistan.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant’s character and performance in combat environments are very well-regarded by his personal and professional references. His deep and lifelong relationships with U.S. government and military personnel are such that any conflict of interest can be expected to be resolved in favor of the U.S. interest. I conclude Applicant mitigated the foreign influence security concerns.

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<sup>12</sup> ISCR Case No. 10-05329 at 3 (App. Bd. Oct. 17, 2011). See ISCR Case No. 06-25928 at 3-4 (App. Bd. Apr. 9, 2008).

### **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.g.: 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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Eric H. Borgstrom  
Administrative Judge