



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



In the matter of:

ISCR Case No. 17-00581

Applicant for Security Clearance

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

December 15, 2017

**Decision**

MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On March 28, 2017, 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 Guideline B.<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 April 15, 2017, Applicant submitted a written reply to the SOR, and requested a decision that the case be decided after a hearing before an administrative judge. (RSOR.) The case was first assigned to another administrative judge on May 18, 2017, but it was then reassigned to me on July 5, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 30, 2017, scheduling the hearing for

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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.

June 22, 2017. Because the Applicant was unavailable for several months, a second notice of hearing was issued on May 31, 2017, scheduling the hearing for August 29, 2017. The hearing was convened as scheduled.

At the hearing, the Government offered Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf and presented evidence which was identified and entered into evidence without objection as Exhibits A and B.

Based on my careful review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **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 4. 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 material described above, I make the following findings of fact.

Applicant is 30 years old. He was born in Afghanistan in 1986, and he moved to the United States in 2007. He became a naturalized United States citizen in 2014. Applicant is unmarried and he has no children. Applicant graduated high school and attended community college. He has been employed by a defense contractor as a Linguist/Interpreter for the last three years, 11 years in total, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 6-7, 23-26, 50.)

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

The SOR lists two allegations regarding Foreign Influence, under Adjudicative Guideline B:

1.a. It is alleged in the SOR that Applicant's mother and father are citizens and residents of Afghanistan, and his father is currently a judge in superior court in Afghanistan. Applicant admitted this allegation in his RSOR. At the hearing, Applicant testified that his father is still a judge, but not in the superior court. His mother has always been a housewife. Neither of his parents have ever come to the United States, but he plans to apply for them to move to the United States, which is their desire. Applicant last saw his parents in 2014, after five years. He speaks with his mother twice a week and his father once every 10 days or two weeks. (Tr at 26-29, 46.)

2.b. It is alleged in the SOR that Applicant has six brothers, who are citizens and residents of Afghanistan. Applicant also admitted this allegation in his RSOR. Applicant testified that none of his brothers is employed by the Government of Afghanistan. Applicant is the oldest of all of his brothers. Only one of Applicant's brother, the second oldest, is employed, and the others are all students. The employed brother has been working as a linguist for the United States military for one and a half years, and Applicant speaks to him once a week. Two of Applicant's other brothers have also applied to be interpreters. Applicant speaks to his other brothers two or three times a month. (Tr at 29-33, 44.)

Applicant testified that he has other relatives in Afghanistan, but he is not in contact with them. Applicant has an aunt and some cousins in the United States, but Applicant has no contact with them. He does have one cousin, who has been in the United States for almost three years, who is an interpreter like Applicant. Applicant visited him in the United States the week before the hearing. (Tr at 33-36.)

Applicant purchased a home in the United States in January 2017, for \$500,000. Applicant testified that he has worked as an interpreter for the U.S. military since he was 16 years old. Applicant began his career as an interpreter when his father took him to a United States base in Afghanistan, and he met members of the United States military. He has always saved his money, and that is how he was able to put \$100,000 down to purchase the house. Applicant has no property interest in Afghanistan, nor does he stand to inherit anything there. He also does not provide any financial aid to his relatives in Afghanistan. Finally, Applicant testified that he is totally loyal to the United States. (Tr at 36 -42, 47.)

## **Mitigation**

Applicant submitted a number of documents in mitigation. They include: nine letters and Certificates of Appreciation (Exhibit B), and four very positive character letters, including one from a United States Marine Corps Colonel, who wrote that Applicant was a tremendously valuable asset to his organization, whose "ability to interact with uniformed personnel, government civilians . . . and local nationals is nothing short of outstanding." (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 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.

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's family members, especially his mother and father, are citizens and residents of Afghanistan. His father is also a judge in Afghanistan. This 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 Applicant's long history of working as an interpreter for the United States military, his financial assets in the United States, his strong feelings of loyalty to the U. S., the very laudatory letters of recommendation, and the Certificates of Appreciation that he has received, I find that mitigating factor AG ¶ 8(b) is applicable and controlling 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 Guideline B in my whole-person analysis. Overall, the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

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.

Martin H. Mogul  
Administrative Judge