



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



In the matter of: )  
)  
) ISCR Case No. 17-03263  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

06/08/2018  
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**Decision**  
\_\_\_\_\_

TUIDER, Robert, Administrative Judge:

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

**Statement of the Case**

On November 2, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. On November 24, 2017, Applicant responded to the SOR and requested a hearing before an administrative judge.

On February 13, 2018, the case was assigned to another administrative judge. On March 8, 2018, the case was reassigned to me. On March 8, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing for April 16, 2018. The hearing was convened on that date. On April 27, 2018, DOHA received the hearing transcript (Tr.).

## **Evidentiary Rulings**

### **Evidence**

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, did not call any witnesses, and submitted Applicant Exhibit (AE) A, a folder with 8 tabs, which was admitted without objection.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about Afghanistan. Applicant did not object, and the request was granted. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that the risk of terrorist activities in Afghanistan remains extremely high. No section of Afghanistan is safe or immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other Western nationals at any time. The country's human rights record remains poor.

### **Findings of Fact**

Applicant is a 30-year-old linguist employed by a defense contractor since February 2017. He seeks a security clearance as a requirement of his continued employment. (Tr. 16-17, 19, 64-67)

Applicant was born in a refugee camp to Afghan parents. He completed the equivalency of high school in 2008 in Afghanistan. While in high school, he began working for the U.S. Army as a linguist in 2008. He continued working as a linguist until 2013 when he immigrated to the United States. (Tr. 21-22, 52-58; GE 1; AE A) Because of his work with the U.S. Army, he was eligible for a Special Immigrant Visa. (Tr. 24-25; AE A)

Shortly after receiving his "green card," Applicant enlisted in the U.S. Navy. He served in the U.S. Navy from February 2015 to August 2016, and was honorably discharged as seaman apprentice (pay grade E-2) based on hardship. While serving in the U.S. Navy, he became a U.S. citizen in 2015, and was issued his U.S. passport that same year. It was Applicant's desire to make the Navy a career until he encountered his hardship situation. (Tr. 18, 24-28, 61-63, 83; AE A) After he was discharged from the Navy, Applicant was employed as an Uber driver until he began his current job as a linguist. (Tr. 20-21, 63-64)

Applicant was deployed as a linguist to Afghanistan two times, from February 2017 to July 2017 and from August 2017 to February 2018. (Tr. 19-20, 65-66) During his second deployment, it became unsafe for him to remain in Afghanistan after the Taliban and al-Qaeda discovered his involvement with the U.S. Army, prompting his early return to the United States with the full support of his supervisors. (Tr. 58-60, 79; AE A)

Applicant married a native-born Afghan citizen in Afghanistan in 2016. She currently resides in Afghanistan with Applicant's three brothers and their families, is a homemaker, and recently became the mother of their infant daughter. Applicant submitted a Consular Report of Birth Abroad to a U.S. citizen with the U.S. Embassy for his daughter, which will extend U.S. citizenship to her. Applicant's wife has a pending visa application to immigrate to the United States. (Tr. 28-33, 67-71, 76; AE A) After his wife immigrates to the United States, Applicant plans to pursue a bachelor's degree in civil engineering using his GI Bill. (Tr. 82)

Applicant's mother is a citizen of Afghanistan and resident of the United States with a "green card." She is in her 60s, a widow, a career homemaker, and is dependent on Applicant for support. (SOR answer; Tr. 34, 71; AE A) Applicant has four siblings – three brothers and one sister, who are resident citizens of Afghanistan. Two of his brothers alternate selling furniture and household items in Saudi Arabia for six months a year and spend the remaining six months in Afghanistan with their families. His sister is a homemaker, married and has a family. Applicant's youngest brother is an unmarried university student in Afghanistan. None of Applicant's immediate family members or in-laws are employed by or associated with the Afghan government. Most or all of Applicant's immediate family wish to immigrate to the United States. (SOR answer; Tr. 35-64, 72-76) Lastly, Applicant has infrequent contact with an uncle, who is employed as a security guard for an Afghan government official. (SOR answer; Tr. 44-46, 76-77)

Applicant has weekly contact with his siblings typically through Facebook Messenger. (Tr. 47) He has frequent contact with an Afghan cousin and her family, who live in the United States. Applicant's mother lives with this cousin. (Tr. 48, 72) Applicant has checking and savings accounts in the United States and has no bank accounts in Afghanistan. He sends money to his wife in Afghanistan through Western Union. Applicant does not own real property in the United States, but does own an automobile. He and his three brothers purchased a small plot of land in Afghanistan adjacent to their family home to provide the family with additional living space. (Tr. 50-52, 77-79; AE A)

Applicant stated that he would immediately report any contact by a foreign government, intelligence or security service, or terrorist organization, or any attempt to blackmail or coerce him. (Tr. 80-81) He received numerous recommendation letters, awards, and certificates for his service as a linguist in support of the U.S. Army. One senior U.S. Army officer noted that Applicant had gone on over 50 combat patrols and risked his life in support of U.S. military forces. (AE A) Applicant professed his undivided loyalty to the United States:

I have worked six (6) years as a linguist in Afghanistan supporting the United States Government and its Military and always been very loyal and trustworthy to its missions and never [raised] any questions that harm the national interests of the US Government and its military. I also served on active duty for the United States Navy for 2 years. I am kindly requesting from DOD CAF to help and assist in adjudicating my security clearance. (SOR answer)

Applicant became a U.S. citizen because of the protection afforded by the Constitution. He recognizes the opportunities available in the United States such as the right to work. He stated no one would ever want to go back to his or her country of origin because the United States is a great and beautiful country. (Tr. 60-61)

## **Policies**

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 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 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. The following are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant's wife, four siblings, and some extended family members are resident citizens of Afghanistan. His uncle works as a security guard for an Afghan government official. The potential for terrorist violence against U.S. interests and citizens remains extremely high in Afghanistan, and it continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; and

(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.

I considered the totality of Applicant's ties to Afghanistan. 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>1</sup>

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He stated that he would immediately report any contact by a foreign government, intelligence or security service, or terrorist organization, or any attempt to blackmail or coerce him. The Appeal Board has stated that such a statement, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security.<sup>2</sup> In

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<sup>1</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>2</sup> ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

### **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 in my whole-person analysis.

Applicant's work with the U.S. military in Afghanistan earned him a Special Immigrant Visa. He returned to Afghanistan two times since his immigration to work with the U.S. military. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."<sup>3</sup> The complicated state of affairs in Afghanistan places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence 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 B:	For Applicant
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Subparagraphs 1.a-1.f:	For Applicant
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### **Conclusion**

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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Robert Tuider  
Administrative Judge

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<sup>3</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).