



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03267

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

11/02/2018

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**Decision**

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CERVI, Gregg A., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 16, 2015. On December 11, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B,<sup>1</sup> Foreign Influence. Applicant answered the SOR on January 5, 2018, and requested a hearing. On January 26, 2018, the case was assigned to me. On February 21, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 14, 2018. Applicant's hearing was held as scheduled.

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<sup>1</sup> The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 20, 2018.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about Afghanistan. (HE 1) The facts administratively noticed are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant is a 43-year-old employee of a defense contractor, working as a role player/trainer. He was born in Afghanistan in 1975 and earned a bachelor's degree in 1995. Applicant requested asylum in the United States in December 2007, and it was granted in 2008. He received a "green card" in 2009, and was naturalized as a U.S. citizen in April 2015. He married for the second time in Afghanistan in 2015 to an Afghan citizen, who resides with Applicant in the United States. He sponsored his spouse for permanent residency. They have one child born in Afghanistan, but naturalized as a U.S. citizen.

The SOR denotes Applicant's ties and financial support to family members who are citizens and residents of Afghanistan. He admitted all of the SOR allegations.

Applicant attended the Afghan Military Academy from 1992 to 1995, and was commissioned an officer in the Afghan Army. He served from 1995 to 2007. In 1996, his service was suspended because the Taliban had taken control of Kabul. He lived in poverty during the Taliban reign, until they were overthrown by U.S. forces in December 2001. In 2002, Applicant returned to the academy to work as a platoon leader until 2003. He joined the new Afghan Army in 2003 and served as a supply officer and as an aide to an Afghan commanding general in Kabul to 2006. He attended the U.S. Army Logistics Management School in 2005 and served alongside U.S. and coalition forces in Afghanistan.

In 2007, he attended the Defense Language Institute and the U.S. Army Quartermaster School in the United States as a foreign exchange student, graduating in October 2007. He met an American housekeeper while he was attending school, and within a few months, they married in March 2007. They lived together for short periods on-and-off, until they were separated in October 2007. Applicant divorced his first spouse in 2011.

While attending the U.S. Army school as an exchange student, Applicant applied for asylum status in October 2007 because of verbal and written threats against him and his family in Afghanistan while he served in the Afghan military. He noted in response to government interrogatories, that most Afghan locals viewed him as an informer for the U.S. and coalition forces, and saw him as their enemy. In testimony, he noted that his father and brother were "cornered" by the Taliban and had to escape, and threatening leaflets were distributed throughout their neighborhood. He was granted asylum in the U.S. in 2008 and he abandoned his Afghan unit without providing notice or receiving permission from the Army. He left the Army with the rank of captain and claims that he has had no contact with anyone from the Afghan military.

Applicant was permitted to work in the United States beginning in January 2008, and worked odd jobs until he was hired by his current employer in 2009. In response to government interrogatories, Applicant was asked to list his foreign travel from January 2010 to October 2017. He failed to list travel to Afghanistan in December 2010 to January 2011 while his mother was hospitalized, presumably using his Afghan passport. His U.S. passport was issued in 2015. Since that time, he reported additional travel to Afghanistan in May 2015 to meet and marry his current spouse; October 2015 to arrange for a travel visa for his spouse; August 2016 to bring his spouse and child to the U.S.; and in October 2017 with his spouse to attend to his mother-in-law during surgery. Applicant does not hold any foreign property or financial interests.

Applicant's mother (65), father (72), three brothers, two sisters, and parents-in-law are citizens and residents of Afghanistan. Applicant's brothers are married with children. One brother is an officer in the Afghan Air Force. One brother is a nurse, and the other is a retail store manager. Applicant maintains contact with his brothers every three to six months. He speaks to his parents weekly. Applicant's sisters are in medical school. He sends them about \$1,800 per year to assist with educational expenses. Applicant's spouse speaks to her parents about once per month.

Applicant and his spouse rent a home and have bank accounts worth about \$62,000. They hope to buy a house. They have no other appreciable assets. His spouse intends to apply for U.S. citizenship when she is eligible. Applicant provided numerous certificates denoting his achievements and service schools, and several letters of strong support from his employers and colleagues, including a retired U.S. Army general. He is well liked and highly regarded as an honest and hard-working employee.

## **Afghanistan**

Afghanistan is a country in Southwestern Asia that is approximately the size of Texas (249,935 square miles). Pakistan borders it on the east and the south. Iran borders it on the west and Russia to the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. In 2009, the population was about 28 million people with about three million Afghans living outside Afghanistan.

Afghanistan is presently an Islamic Republic with a democratically-elected president. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union withdrew from Afghanistan, fighting continued among the various ethnic, clan, and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic government took power in 2004 after a popular election.

A U.S. State Department Travel Warning remains in effect. The 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 kidnapping, hostage-taking, military combat operations, landmines, banditry, armed 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 (IEDs). Attacks may also target official Afghan and U.S. governmental convoys and compounds, foreign embassies, military installations, and other public areas.

Extremists associated with various Taliban networks, the Islamic State of Iraq and the Levant - Khorasan Province (ISKP) and members of other armed opposition groups are active throughout the country. ISKP has shown its operational capability, having attacked both Afghan and foreign government facilities. The Taliban and its affiliates routinely attack Afghan, Coalition, and U.S. targets with little regard for civilian casualties.

Due to security concerns, unofficial travel to Afghanistan by U.S. government employees and their family members is restricted and requires prior approval from the State Department. According to the State Department's 2015 Country Reports on Terrorism, Afghanistan continued to experience aggressive and coordinated attacks by the Taliban, including the Haqqani Network and other insurgent and terrorist groups. The Haqqani Network continued to plan and conduct high profile attacks and assassinations against U.S., Coalition and Afghan interests, particularly in Kabul and other key government centers.

According to the State Department, the border region of Afghanistan and Pakistan remains a safe haven for terrorists. It is an under-governed area that terrorists exploit to conduct attacks in both countries. Terrorist groups active in Afghanistan, such as al-Qa'ida (AQ), the Haqqani Network and others, operate in Afghanistan and Pakistan. ISIL-Khorasan (ISIL-K) is largely based in Afghanistan, but its support network also reaches into Pakistan's tribal areas along the border. The Afghan government has struggled to assert control over this remote terrain where the population is largely detached from national institutions.

According to the U.S. Defense Department's June 2016 report on Afghanistan, although al-Qa'ida's core leadership in the Afghanistan-Pakistan border region has been degraded, elements continue to seek safe haven on both sides of the border to regenerate and conduct attack planning. The continued development of an al-Qa'ida affiliate in the region (al-Qa'ida in the Indian Subcontinent (AQIS)), highlights the dynamic nature of the terrorist and militant landscape of the region, posing risks to the mission and to U.S. interests.

In its annual Human Rights Report for 2015, the U.S. Department of State reported that the most significant human rights problems in Afghanistan during the year 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, as well as targeted violence and societal discrimination against women and girls.

The United States' extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to its citizens and residents and Afghan Government problems developing and complying with the rule of law. A top national

security goal of the United States is to establish relationships, cooperation, training, and support of the Afghanistan Government and military in the ongoing war against terrorism.

### **Law and Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of

disproving it never shifts to the Government. See ISCR Case No. 02- 31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” Egan, 484 U.S. at 531; see AG ¶ 1(d).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 has three conditions that could raise a security concern and may be disqualifying 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; and

(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.

Applicant is a U.S. citizen who maintains regular contact with his parents and siblings who are residents and citizens of Afghanistan. He sends money to his sisters to assist with their medical school education, and one of his brothers is an officer in the Afghan Air Force. His spouse is an Afghan citizen residing in the U.S., and she maintains regular contact with

her parents in Afghanistan.

The mere possession of close family ties with one or more family members living in Afghanistan is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03- 02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002).

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Afghanistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in Afghanistan.

Applicant's relationship with his relatives who are foreign citizens living in Afghanistan create a potential conflict of interest because of the potential for pressure to be placed on his family living in Afghanistan in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's contacts with family who are citizens of Afghanistan and has raised the issue of potential foreign pressure or attempted exploitation. In addition, Applicant received asylum in the United States based on his claims of threats against him and his family while he served in the Afghan military and assisted U.S. interests. Finally, his spouse is a citizen of Afghanistan and maintains regular contact with her family. He has traveled to Afghanistan several times since receiving asylum in the U.S. to marry, aid his family members, and to assist his mother-in-law. AG ¶¶ 7(a), (b), and (e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, 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; 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.

Based on the record, there is insufficient evidence to fully apply any of the mitigating conditions. Applicant has frequent contact with his parents and some siblings, who are citizens and residents of Afghanistan, and resides with an Afghan citizen who has regular contact with her parents in Afghanistan. He provides financial support for his sisters, and his brother is an Afghan military officer. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant was born in Afghanistan in 1975 and requested asylum in the United States in December 2007 because of threats against him and his family from the Taliban. It was granted in 2008. He received a "green card" in 2009, and naturalized as a U.S. citizen in April 2015. He married in Afghanistan in 2015 to an Afghan citizen, who now resides with him in the United States. He and his family rent a home and have a bank account. They have no other appreciable assets in the U.S.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Afghanistan. Applicant's parents and siblings currently live in Afghanistan. Like every other resident of Afghanistan, they are at risk from terrorists and the Taliban. However, unlike all, he and his family have been specifically targeted and threatened because of Applicant's military service and support for U.S. and coalition forces. He served in the Afghan military in Kabul alongside U.S. and coalition forces, a highly risky and dangerous activity that likely put him in direct contact with enemy forces or intelligence operatives fighting against the United States and allied forces. Applicant and his relatives living in Afghanistan are potential targets of terrorists and the Taliban, and Applicant's potential access to classified information could theoretically add risk to his relatives living in Afghanistan from lawless elements in Afghanistan. In addition, he traveled to Afghanistan on four occasions despite receiving asylum in the United States because of threats to himself and his family by the Taliban.

Applicant has not shown evidence of "deep and longstanding relationships and loyalties in the United States." His patriotism is not being questioned, rather he has not shown that his ties to the U.S. outweigh his familial interests in Afghanistan. After a brief relationship and marriage to a U.S. citizen while applying for asylum, Applicant abandoned his military obligations without notice or permission; traveled to Afghanistan despite his claims of threats requiring asylum in the U.S.; maintains regular contact with his family, including a brother serving as an officer in the Afghan military and provides financial support

for his sisters; and his spouse is an Afghan citizen who maintains regular contact with her family in Afghanistan. Applicant's work with U.S. and coalition forces in Afghanistan while serving in the Afghan Army and his glowing letters of recommendation weigh in his favor. However, these factors are insufficient to overcome the foreign influence security concerns raised above. Those concerns have not been sufficiently mitigated.

### **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 have incorporated my comments under Guideline B in my whole-person analysis.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there.<sup>2</sup> Afghanistan is a dangerous place because of violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the Afghan Government, the interests of the United States, U.S. armed forces, and those who cooperate and assist the United States. Applicant and his family in Afghanistan have been specifically targeted by Taliban forces because of his cooperation with U.S. interests, resulting in his request for asylum. His brother continues to work as an Afghan Air Force officer, and his immediate family and in-laws remain in Afghanistan and are subject to terrorist activity that puts Applicant at significant risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant's interests in the United States do not overcome the foreign influence concerns.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the foreign influence security concerns raised in the

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<sup>2</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

SOR and described above. Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **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:	Against Applicant
Subparagraphs 1.a and 1.f:	For Applicant
Subparagraphs 1.b - 1.e, and 1.g:	Against 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Gregg A. Cervi  
Administrative Judge