



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-05203

Appearances

For Government: Braden M. Murphy, Department Counsel
For Applicant: *Pro se*

12/31/2012

Decision

HARVEY, Mark, Administrative Judge:

Applicant is close to his parents, younger brother, and two sisters, who are citizens and residents of Afghanistan. Applicant has completed over 200 combat missions with U.S. forces in Afghanistan as a linguist, showing bravery, loyalty, and fidelity to the United States. His Afghan family is immigrating to the United States. Foreign influence security concerns are mitigated, and eligibility for access to classified information is granted.

Statement of the Case

On December 8, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On October 17, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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) promulgated by the President on December 29, 2005. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or

continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted for Applicant.

On November 5, 2012, Applicant responded to the SOR and requested a hearing before an administrative judge. (HE 3) On November 21, 2012, Department Counsel was prepared to proceed. On December 12, 2012, DOHA assigned the case to me. Department Counsel and Applicant discussed setting the hearing because of Applicant's deployment schedule to Afghanistan. (Tr. 11-12) Applicant waived his right to 15 days of notice of the date, time and location of his hearing. (Tr. 13) On December 12, 2012, DOHA sent notice of the hearing. Applicant agreed to proceed with the hearing on December 18, 2012, and the hearing was held as scheduled. I received the transcript of the hearing on December 31, 2012. There were no post-hearing documents submitted as proposed exhibits.

Procedural Rulings

At the hearing, Department Counsel offered three exhibits, and Applicant offered four exhibits. (Tr. 17, 19-20; GE 1-3; AE A-D) Applicant and Department Counsel did not object to my consideration of any exhibits, and I admitted GE 1-3 and AE A-D. (Tr. 17-18, 20)

Department Counsel requested administrative notice (AN) of facts concerning Afghanistan. (Tr. 13-14; HE 4, AN Request) Department Counsel provided supporting documents to show detail and context for those facts. (HE 4, Ex. I to IX) Applicant did not object, and I granted Department Counsel's request. (Tr. 14)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a and 1.c, and he partially admitted the allegations in SOR ¶ 1.b. (HE 3) He also provided mitigating evidence. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 27 years old. (Tr. 5, 21) In 2004, he graduated from high school in Afghanistan. (Tr. 5-6, 21-22) For three years, he worked for the United Nations in

¹The facts in this decision do not specifically describe employment, names of witnesses, names of other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Afghanistan because of his expertise in English and other languages, mathematics, and computer science. (Tr. 22-24) Next, he worked for a U.S. corporation that provided security guards for U.S. installations in Afghanistan. (Tr. 24-25)

In June 2008, Applicant moved to the United States on a fiancé visa, and that same month, he married a U.S. citizen, who was an Afghan linguist. (Tr. 26, 28-29, 41) In August 2010, he became a U.S. citizen. (Tr. 28) In January 2011, he was divorced. (Tr. 32) He is not currently married, and he does not have any children. (Tr. 33) He has taken some college preparation classes in the United States. (Tr. 5-6) A Department of Defense contractor employs him as a linguist and cultural advisor. He does not currently hold a security clearance. (Tr. 6)

Shortly after arriving in the United States, Applicant began working for a Defense contractor in role playing for U.S. military pre-deployment training exercises. (Tr. 29-30) From September 2009 to June 2010, he deployed to Afghanistan as a linguist for U.S. forces. (Tr. 30) In December 2010, he began working for his current employer. (Tr. 31) From April 2011 to October 2012, he deployed to Afghanistan, and he returned to Afghanistan in late December 2012. (Tr. 31)

Applicant's father is a university professor in Afghanistan. (Tr. 33) His father applied for a U.S. visa to immigrate to the United States. (Tr. 34) Applicant's mother is a high school mathematics teacher in a big city in Afghanistan. (Tr. 33) His mother came to the United States in 2012 and stayed with Applicant and his girlfriend for two months. (Tr. 39) In May 2012, his mother received her U.S. green card, and she applied for visas for Applicant's father, 12-year-old brother, 14-year-old sister, and 17-year-old sister. (Tr. 27, 34-36; SOR response) His father and siblings living in Afghanistan are waiting for their U.S. visa interviews. (Tr. 35) Applicant expects all of his immediate family members, except for one brother living in India, to be living in the United States by the end of 2013. (Tr. 28, 36)

Applicant communicates with his mother about once a month and with his father about three or four times a year. (Tr. 36, 39-40) When he is in Afghanistan, he rarely communicates with his parents, and he only visited them once in 2010 because of safety issues. (Tr. 36-38) His parents are not aware of his work location or his type of work in Afghanistan. (Tr. 36) He does not plan to visit his family again while they are in Afghanistan. (Tr. 38) He has given his mother small amounts of money to purchase gifts for his siblings. (Tr. 41) He does not own any property in Afghanistan. He owns a rental property in the United States. (Tr. 42)

Applicant's annual linguist salary during his first tour in Afghanistan was \$185,000, during his second tour in Afghanistan, it was \$205,000, and during his pending tour in Afghanistan, it will be \$140,000. (Tr. 43) His pay this tour is lower because he will be in a training position and will not leave the U.S. installation. (Tr. 45) If he receives a security clearance, he will be assisting in more dangerous missions, and he is likely to receive greater pay. (Tr. 45)

Applicant's 26-year-old brother is a resident of Norway; however, he is currently studying in India. (Tr. 35) He will be studying in India for about three more years. (Tr. 46) Another of Applicant's brothers has six months of study in India remaining, and then he intends to move to the United States. (Tr. 47)

When Applicant is not in Afghanistan, he lives with his girlfriend of two years. (Tr. 49) She is a U.S. citizen. (Tr. 49) She was born in the United States, and she has a bachelor's degree. (Tr. 50) She has a good relationship with Applicant's mother, and her parents provided character references for Applicant. (Tr. 51; AE C, D)

In sum, Applicant lived in Afghanistan the first 20 years of his life, moved to the United States, became a U.S. citizen, and then returned to Afghanistan, where he served for three years in a combat zone on behalf of the U.S. Government. (Tr. 44) He completed more than 200 combat missions. (SOR response) He wants to continue to support the U.S. military. (Tr. 44) He promised "to protect the United States with honor and distinction." (Tr. 44) If he learned that his family was having trouble in Afghanistan, he would contact his facility security officer. (Tr. 43)

Character Evidence

Applicant provided character references from three U.S. Army captains, a major, a lieutenant colonel, and three civilians. (SOR response; AE A-D) The lieutenant colonel (LTC) was a U.S. Army cavalry squadron commander, who went on over 50 combat missions with Applicant, including air assault missions to remote areas along the Pakistan border. (SOR response) The LTC described Applicant as an extraordinary linguist, who provided essential communication skills on a variety of missions. "He was an integral part of our team from the beginning as he skillfully facilitated numerous shuras and jirgas with high ranking [Afghan] leaders." (SOR response) A major and the other officers made similar remarks about Applicant's contributions to mission accomplishment. The major stated:

I cannot overstate how important [Applicant] has been to our mission. He has developed key relationships with important tribal leaders, district Sub-governors, and district Chiefs of Police in our Area of Operations (AO); he is a tremendous asset to this command. He is a likeable, respectful, sincere young man who inspires trust and confidence in all who meet him. All the key people in our AO knew his voice over the telephone and recognize and trust him; he is a crucial asset for us. (SOR response)

Afghanistan

Afghanistan is a country in Southwestern Asia. It 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 3,000,000 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. Despite that election, terrorists including al-Qaeda and the Taliban continue to assert power and intimidation within the country. Safety and security are key issues because these terrorist organizations target United States and Afghan interests by suicide operations, bombings, assassinations, car-jacking, assaults, and hostage taking. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence.

The United States-Afghan relationship is summarized as follows:

After the fall of the Taliban, the U.S. supported the emergence of a broad-based government, representative of all Afghans, and actively encouraged a [United Nations] role in the national reconciliation process in Afghanistan. The U.S. has made a long-term commitment to help Afghanistan rebuild itself after years of war. The U.S. and others in the international community currently provide resources and expertise to Afghanistan in a variety of areas, including humanitarian relief and assistance, capacity-building, security needs, counter-narcotic programs, and infrastructure projects.

During his December 1, 2009 speech at West Point, President Barack Obama laid down the core of U.S. goals in Afghanistan: to disrupt, dismantle, and defeat al-Qaeda and its safe havens in Pakistan, and to prevent their return to Afghanistan. . . . [T]he United States plans to remain politically, diplomatically, and economically engaged in Afghanistan for the long term.

(U.S. Department of State, *Background Note: Afghanistan*, Nov. 28, 2011 at 13) The United States has more combat troops deployed to Afghanistan than to any other foreign country. The U.S. Government plans to withdraw U.S. combat troops from Afghanistan in the next two years. The United States' extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to citizens and residents of Afghanistan and Afghan Government problems developing and complying with the rule of law.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance 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, these guidelines are applied 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 all available, reliable information about the person, past and present, favorable and unfavorable.

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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline B (foreign influence).

Foreign Influence

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

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact 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 sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

AG ¶¶ 7(a) and 7(b) apply. Applicant, his parents and siblings were all born in Afghanistan. His parents, youngest brother, and two sisters all currently live in Afghanistan. He has frequent contact with his mother. He provides money for gifts for his family living in Afghanistan, and he cares about their welfare. He admitted that there are safety issues for his family in Afghanistan, just as there are for hundreds of other Afghan linguists supporting U.S. forces, with family living in Afghanistan. Thousands of

U.S. and coalition armed forces and civilian contractors serving in Afghanistan are targets of terrorists or the Taliban, along with Afghan civilians who support the Afghan Government and cooperate with coalition forces. Applicant's family is not receiving any special protection from terrorists or the Taliban from the Afghan or U.S. Governments.

The mere circumstance of close family ties with a family member 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).

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 greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government 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.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Afghanistan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Afghanistan has an enormous problem with terrorism. Applicant's relationship with family members living in Afghanistan creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist family members in Afghanistan by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his family living in Afghanistan and has raised the issue of potential foreign pressure or attempted

exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six 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 U.S.;

(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;

(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 cognizant security authority;

(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.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contact with his mother and less contact with his father and three siblings living in Afghanistan. His loyalty and connections to his family living in Afghanistan are a positive character trait. However, for security clearance purposes, those same connections to his family living in Afghanistan negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Afghanistan citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. In June 2008, Applicant moved to the United States on a fiancé visa. In August 2010, he became a U.S. citizen. He has taken some college

preparation classes in the United States. Department of Defense contractors have employed him as a linguist and cultural advisor since 2009. Most importantly, Applicant wants his security clearance so that he can return to Afghanistan and assist U.S. Armed Forces in a more dangerous combat environment. He has offered to continue to risk his life to support the United States' goals in Afghanistan. He has shown his patriotism, loyalty, and fidelity to the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family living in Afghanistan, and indirectly, his family's relationships with other Afghan citizens living in Afghanistan. He frequently communicates with his mother living in Afghanistan. There is no evidence, however, that terrorists, criminals, the Afghan Government, or those conducting espionage have approached or threatened Applicant or his family in Afghanistan to coerce Applicant or his family for classified or sensitive information.² As such, there is a reduced possibility that Applicant or his family would be specifically selected as targets for improper coercion or exploitation. On the other hand, Applicant has conceded that his family, like every other family living in Afghanistan, is already at risk from terrorists and the Taliban.

While the Government does not have any burden to prove the presence of evidence that entities in Afghanistan have targeted Applicant's family, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' huge investment of manpower and money in Afghanistan, and Applicant has supported U.S. goals and objectives in Afghanistan. Applicant and his family living in Afghanistan are potential targets of terrorists and the Taliban because of Applicant's own activities and support for the United States, and Applicant's potential access to classified information could theoretically add some risk to Applicant and his family from lawless elements in Afghanistan.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Afghanistan. Applicant is not required to report his contacts with family members living in Afghanistan.

AG ¶ 8(f) has limited application because there is no evidence that Applicant has any interest in property or bank accounts in Afghanistan. However, this mitigating condition can only fully mitigate the disqualifying condition under AG ¶ 7(e), which provides, "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation." All of Applicant's assets are in the United States.

In sum, Applicant's connections to family living in Afghanistan are significant and greater than his current family connections to the United States; however, his U.S. Government employment, performance of linguist duties in a combat zone, and U.S.

²There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

citizenship are more significant than his connections to his family living in Afghanistan. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B. Foreign influence concerns under Guideline B are mitigated; however, assuming AG ¶ 8(b) is not applicable, security concerns are separately mitigated under the whole-person concept, *infra*.

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(a):

(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. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are foreign influence security concerns arising from Applicant's parents, brother, and sisters being citizens and residents of Afghanistan. Applicant, his parents, and his siblings were born in Afghanistan. He frequently communicates with his mother and to a lesser extent his father and siblings in Afghanistan. His family in Afghanistan is at a greater risk due to Applicant's position as a linguist and, if his clearance is granted, there is a theoretical increase in the risk to his family in Afghanistan.

The factors weighing towards approval of Applicant's security clearance are more substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations. The most significant factor is that Applicant went on more than 200 combat missions in Afghanistan and made substantial contributions to the U.S. military at great personal risk. He wishes to return to Afghanistan and serve with U.S. Armed Forces as a linguist and translator, risking his life as part of his duties on behalf of the U.S. combat forces in Afghanistan. He is fully aware of the risks to himself, and he is also aware that his family members in Afghanistan are at risk from terrorists and the Taliban. All 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. See ISCR Case No. 07-00034 at 2 (App. Bd.

Feb. 5, 2008). Applicant does not own property in Afghanistan. When he was naturalized as a U.S. citizen, he swore allegiance to the United States. His desire for employment as a translator and recommendations from three U.S. Army captains, a major, a lieutenant colonel, and three civilians document his outstanding performance as a translator, loyalty, trustworthiness, and reliability, and they weigh heavily towards approval of his security clearance.

A Guideline B decision must take into consideration the geopolitical situation and dangers in Afghanistan.³ The Taliban and terrorists cause Afghanistan to be a very dangerous place. 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. The Afghan Government does not fully comply with the rule of law or protect civil liberties in many instances. Applicant's linguist duties in Afghanistan will be personally dangerous. The United States and Afghan Governments are allies in the war on terrorism. The United States is committed to the establishment of a free and independent Afghan Government. Afghanistan and the United States have close relationships in diplomacy and trade.

I have carefully assessed Applicant's demeanor and sincerity at his hearing, and I find his statements to be credible. 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. I conclude Applicant has carried his burden and foreign influence concerns are mitigated. Eligibility for 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 through 1.c:	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.

Mark Harvey
Administrative Judge

³ 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).