



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ICSR Case No. 12-07649
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq. Department Counsel
For Applicant: *Pro se*

03/21/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant failed to mitigate security concerns for foreign influence.

Statement of the Case

On October 24, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor as an interpreter. Applicant was screened for employment by the defense contractor. He provided information on his background and family relationships. After reviewing the information in the screening interview, DOD adjudicators could not make the affirmative findings required to issue a security clearance. DOD issued a Statement of Reasons (SOR), dated August 9, 2012, to Applicant detailing security concerns for foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on August 27, 2012. He admitted the 12 factual allegations under Guideline B with a detailed explanation. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 10, 2012, and the case was assigned to me on December 13, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on December 14, 2012, for a hearing on January 17, 2013. I convened the hearing as scheduled. The Government offered two exhibits, which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 and 2. Applicant testified, and he offered three documents which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through C. DOHA received the transcript (Tr.) of the hearing on January 28, 2013.

Procedural Issues

Department Counsel requested that administrative notice be taken of certain facts concerning Afghanistan (Hearing Exhibit I) and Pakistan (Hearing Exhibit II). I have considered the request and the documents provided by Department Counsel. Administrative notice is taken of the facts pertaining to Afghanistan and Pakistan as noted below in the Findings of Fact.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 40 years old and has applied to be an interpreter for a defense contractor. Applicant was born in Afghanistan but fled from that country under threatening circumstances for Pakistan in 1991. He left Pakistan in 1994 to pursue his college education in the United States. He received his college degree from a U. S. university in 1998, and a master's degree from a U.S. university in 2003. He became a U. S. citizen on October 7, 2008. He met his wife on a return trip to Afghanistan. He married a citizen of Afghanistan, on May 20, 2011 in the United States. His wife is a permanent resident of the United States and is studying to be a U.S. citizen. They have one son who is a U.S. citizen. Applicant is seeking a security clearance for the first time. (Tr. 12-14, 23-24; Gov. Ex. 1, e-QIP, dated October 24, 2011; March 16, 2011; Gov. Ex. 2, Screening Questionnaire, dated November 1, 2011)

When Applicant was a high school student in Afghanistan in 1989 to 1991, he was forced to become a member of the KHAD, an organization that is part of the Afghan secret police. He was considered a student reporter. His function was to report on anti-government sentiments and activities of freedom fighters from his neighbors and fellow-students. His teachers and school administrators, all members of KHAD, threatened to fail him and not have him graduate. The teachers and administrators also threatened his family. He attended some KHAD meetings, but not many. At the time, he was young and immature. He was 15 years old and felt he had no choice but to do what he was told to do. The extremists were prominent in his area, and the situation in the country

was unstable. He considers the decision to become a member of KHAD as naïve but made under threats. (Tr. 24-26, 61-65)

In 1990, Applicant's father was sought by the Taliban. His family was threatened because their father worked for the government. However, his father hid from the Taliban, and his father and many family members fled to Pakistan. The family remaining in Afghanistan was threatened with death by the government because of his father. He did not leave because he was still in school. As soon as he finished high school in 1991, he also left to join his family in Pakistan. In Pakistan, he started teaching an English language program for women in the refugee camp where his family lived. He was threatened, probably by members of the Taliban, that he would be killed if he did not stop teaching women. He stopped teaching in 1993, because he had applied for admission to colleges in the United States. He was accepted and in 1994, he left for the United States to attend college. His family eventually left the refugee camp, and they now live in a city in Pakistan. (Tr. 25-32)

Applicant was threatened again in 1996. He had returned to visit his family during summer break from school believing that the situation for his family had improved. Either the Taliban or extremists came looking for him and made threats to a family member. He hid from the extremists and moved to different places until he returned to the United States to resume his college education. (Tr. 32-35)

He has lived in the United States since 1994, but has visited his family on occasion. He met his future wife in 2009 on a visit to Afghanistan to see his mother who was ill. They were engaged by proxy in Afghanistan in 2010, and married in the United States in 2011. His wife is a permanent resident of the United States but still a citizen of Afghanistan. She has taken several English language courses and anticipates becoming a United States citizen in 2014. She has continued contact with her parents in Afghanistan. (Tr. 35-38)

Applicant's mother came to the United States in November 2011, but returned to Pakistan in September 2012. She is expected to return to the United States in a few months. His father is a citizen of Afghanistan who lives in Pakistan. He worked as a doctor for the Afghan Ministry of Health from 1979 to 1990 in malaria eradication. He is currently retired from his government position. He owns some land in Afghanistan and is farming the land and rebuilding the farmhouse. He does not have a government income or pension and his income is from the crops he and some tenant farmers grow on his land. The land is valued at approximately \$5,000. He does not have much contact with his father, but he is in monthly contact with his mother. (Tr. 38-42)

One of his brothers, and the brother's entire family, are citizens and residents of the United States. His brother is presently serving with the U.S. forces in Afghanistan as an interpreter.¹ Another of Applicant's brothers has medical issues and has lived with Applicant in the United States since 1996. This brother is a citizen of Afghanistan but a

¹ Applicant's brother works for a defense contractor. He was cleared in 2010 by the Army Central Clearance Facility for eligibility for access to classified information. Except for Applicant's in-laws, they have the same family members in Pakistan and Afghanistan. (Hearing Exhibit III, JPAS Entry, dated January 18, 2013)

permanent resident of the United States since July 2009. He hopes to be U.S. citizen soon. He travels back to Afghanistan with Applicant when he returns. (Tr. 42-45, 65)

One of Applicant's other brothers is a citizen of Afghanistan but resides in Pakistan. He will move back to Afghanistan soon since the Pakistani government has directed that all Afghan citizens living in Pakistan must leave Pakistan shortly. This brother has applied for a visa to enter the United States and, he hopes to receive his visa shortly. Applicant works with this brother in a car import business to Afghanistan. Applicant started the business in 2008 with his brother as the agent for the business in Afghanistan. Applicant opened the business as a small investment opportunity and a means for his brother to gain business skills. Applicant's license to import into Afghanistan expired in 2010 so now the business is solely in his brother's name. Applicant purchases damaged cars in the United States and arranges for their shipment to Afghanistan through Pakistan. His brother receives the cars and arranges for their sale. The business was profitable in 2008, had a small profit in 2009, and lost money in 2010. The business had sales of approximately \$93,000 in 2011 but lost about \$10,000. The business had sales of \$50,000 to \$60,000 in 2012 with an anticipated small profit. The business has slowed substantially, and he is willing to close the business for security clearance purposes. (Tr. 45-54, 65-67)

Two of Applicant's sisters are citizens of Afghanistan residing in Pakistan with his mother and father. These sisters do not work and are not married. (Tr. 55-56) Applicant's three other sisters are citizens and residents of Afghanistan. They are housewives. One of their husband's is a linguist for the U.S. Forces in Afghanistan. Because he has worked for the U.S. Forces in Afghanistan for over two years, he is in the process of trying to come to the United States. Applicant does not know if he has a security clearance for access to classified information. Another husband is an actor, and the third husband just graduated from college and is seeking employment. None of his sisters or their husbands work for the Afghan government. (Tr. 54-57, 67-70)

Applicant's mother and father-in-law are both citizens and residents of Afghanistan. His father-in-law is a teacher and his mother-in-law is a housewife. His wife has not returned to Afghanistan to visit them since she came to the United States in 2011. She has siblings that are citizens and residents of Afghanistan. She is in regular contact with her family in Afghanistan. (Tr. 57-59)

Applicant has a friend who was his roommate in college and is now a resident and citizen of Afghanistan. He returned to Afghanistan in 2005 and now works as a senior executive for an Afghan bank. They were in regular contact until about 2011. However, they have gone on different paths and their contact has been less frequent contact. They last talked in 2011. (Tr. 59-61)

Applicant has no assets in either Pakistan or Afghanistan except for his interest in the car import business. He believes his interest is worth about \$10,000. He provides some support for his family. When his family needs funds, he will send money to his brother in the import business. His wife also has no property in Afghanistan. (Tr. 61-63)

Applicant wants to serve as an interpreter for the U.S. forces because he feels an obligation to serve and contribute to the United States using his language skills. He is fluent in English, Pashto, and Dori. He scored very high on the language proficiency exam administered by the defense contractor. At the hearing, he spoke excellent English and was very articulate. He loves the United States and has spent his adult years in the country. He is grateful for his college education and the opportunity to believe in himself and provide for his family. He calls the U.S. his country and is proud to be a U.S. citizen. He believes that it is safe for him to travel to Afghanistan particularly with the U.S. Forces, but not to be in Pakistan. He is prepared to go in harm's way in service to the United States. (Tr. 14-15, 71-74)

Pakistan and India were a British colony until after World War II. In 1947, India and Pakistan were granted independence by Great Britain with India forming a predominantly Hindu nation and Pakistan a predominantly Muslim nation. In 1971, part of Pakistan became the independent country of Bangladesh. The sovereignty of the state of Kashmir is still disputed by India and Pakistan.

Pakistan today is a parliamentary form of federal government with a population of over 170 million, almost all of which are Muslims. The country has very low income, half the population is illiterate, and the life expectancy is only 64 years. Pakistan has the eighth largest armed forces in the world. It is well trained and disciplined. However because of budget cuts, the armed forces have not been able to maintain their equipment as needed. Pakistan is one of the world's nuclear powers.

There are extensive terrorist activities in Pakistan. Pakistan was one of only three countries to recognize the Taliban regime in its neighbor Afghanistan. However, after September 11, 2001, Pakistan reassessed its relationships with the Taliban and pledged support for the United States and international efforts to remove the Taliban from power. However, the Taliban is known to be active in parts of Pakistan especially along the Afghan and Iranian borders. Financial resources from Pakistan have permitted the Taliban in Afghanistan to exist and gain strength. El Qaida is believed to be headquartered in the border areas between Afghanistan and Pakistan. Pakistan's Army tried to control this area but met with major resistance. The United States considers these terrorist safe areas as ungoverned. The terrorists pose a threat to United States national security because of their ability to organize, plan, raise funds, and recruit, train and operate in the area. The State Department warns United States citizens to curtail non-essential travel to Pakistan because of the terrorist threats. Terrorists have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit. Pakistan's human rights situation and record are poor.

Pakistan and the United States established diplomatic relationships in 1947 and the United States provided economic and military assistance to Pakistan. The Soviet invasion of Afghanistan in 1979 highlighted the common interests of the United States and Pakistan. They agreed to a large economic and military assistance program. However, there continues to be incidents of violence against American interests. Since September 2001, Pakistan provided extensive assistance in the war on terror and the

United States stepped up its economic assistance. In 2004, the United States recognized Pakistan as a major non-NATO ally. The United States sold fighter aircraft to Pakistan thereby deepening their strategic relationship. The United States and Pakistan strategic partnership is based on the shared interests of the United States and Pakistan in building stable and sustainable democracy, and in promoting peace, stability, prosperity, and democracy in South Asia and across the globe. However, in recent years, this relationship has become very strained.(Hearing Exhibit II)

Afghan was an independent monarchy nation from 1919, when the British relinquished control, until 1973 when the monarchy was overthrown by a military coup. The Soviet government supported a coup in 1978 that led to a Marxist government, and Soviet forces invaded and occupied Afghanistan starting in December 1979. Afghan freedom fighters, the Mujaheddin, opposed the Soviet occupation which led to fierce fighting. An accord was reached requiring Soviet forces to withdraw from Afghanistan in February 1989. The Mujaheddin were not a party to the accord and refused to accept the agreements. This led to a civil war that permitted the Taliban to come to power in the mid-1990s. The Taliban imposed an extreme form of Islam on the entire country and committed extensive human rights violations. They also provided sanctuary for terrorist organizations like Al Qu'ida. When the Taliban would not expel Al Qu'ida after the September 11, 2001 attacks on the United States, the United States and coalition partners commenced military operations in October 2001 that forced the Taliban from power in November 2001.

Afghanistan formed a democratic government in 2004. Even though progress has been made since then, Afghanistan faces many challenges including defeating terrorists and insurgents, recovering from decades of civil strife, and rebuilding an economy and infrastructure. The Taliban-backed insurgency has continued with increasingly frequent, sophisticated, dangerous, and destabilizing activities in spite of United States and coalition military operations. Civilians continue to bear the brunt of the violence. The Taliban continues to maintain momentum in spite of losses to their leadership. Armed conflict has spread to almost one-third of the country including areas previously free of violence. The lack of security in many areas and generally low government capacity and competency has hampered efforts at self-governance and economic development. There is continued government corruption and an expanding drug trade. The human rights record is poor with extrajudicial killings, torture, poor prison conditions, official impunity, prolonged pretrial detention, restrictions on freedom of press and religion, violence against women, sexual abuse against children, and human trafficking. The Taliban has strengthened its activities because of Pakistan funding sources, the drug trade, and kidnappings. The Taliban insurgent operations result in numerous attacks and deaths targeted at non-government organizations, journalists, government workers, and United Nation workers. There is an increase in militant attacks by rockets, vehicle-borne explosive devices, and suicide bombing, even in the capital city, Kabul. The United States Department of State classifies Afghanistan as a critical security threat to United States citizens. The relationship between the Afghan government, the U.S. Government, coalition armed forces in Afghanistan have been very strained in the last year. (Hearing Exhibit I)

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 must be considered 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, these guidelines are applied 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(c), 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 access to classified information will be resolved in favor of 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 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.

Analysis

Guideline B: Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in the U.S. interest, 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 consideration 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 ¶ 6)

Almost all of Applicant's family members are citizens of Afghanistan and residents of either Afghanistan or Pakistan. One brother is a citizen and resident of the United States. Another brother resides with Applicant in the United States, and is a permanent resident of the United States. His mother is a citizen of Afghanistan residing in Pakistan but a permanent resident of the United States. His other siblings and their families are citizens and residents of either Afghanistan or Pakistan.

Applicant left Afghanistan for Pakistan in 1991 because of threats in Afghanistan. He was threatened by extremists and terrorists in Pakistan and left in 1993 to pursue his education in the United States. He received a bachelor's and a master's degree from United States universities. He became a U.S. Citizen in 2008. He married another person born in Afghanistan but who now is a permanent resident of the United States. He has a son who was born in the United States and is a U.S. citizen. He visited Afghanistan and Pakistan a number of times since leaving in 1994. He has limited contact with his father but regular monthly contact with his mother. He is in business with one of his brothers who is a resident and citizen of Afghanistan and has regular contact with him. He has limited contact with his other siblings in Afghanistan and Pakistan.

No matter how limited and infrequent, contacts and relationships with family members in Afghanistan and Pakistan are a security concern and raise Foreign Influence Disqualifying Conditions AG ¶ 7(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 AG ¶ 7(b) (connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information). Applicant's wife who lives with him and is a citizen of Afghanistan raises AG ¶ 7(d) (sharing 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). His business interest in Afghanistan with his brother raises AG ¶ 7(e) (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).

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally-existing risk that can be inherent anytime there are foreign contacts and relationships. One factor that heightens the risk in Applicant's case is the worsening relationship between the United States and

both Afghanistan and Pakistan, and the threats of violence, harassment, repressions, and terrorism in both countries especially against United States interests.

Applicant raised facts to mitigate the security concerns arising from his family members in Pakistan and Afghanistan. I have considered Foreign Influence Mitigating Conditions AG ¶ 8(a) (the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.); AG ¶ 8(b) (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest); and AG ¶ 8(c) (contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation).

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." The Appeal Board consistently applied this mitigating condition narrowly, holding that its underlying premise was that an applicant should not be placed in a position where he or she is forced to make a choice between the interest of the family member and the interest of the United States. (See, ISCR Case No. 03-17620, App. Bd. Apr. 17, 2006; ISCR Case No. 03-24933, App. Bd. Jul. 28, 2005; and ISCR Case No. 03-02382, App. Bd. Feb. 15, 2005). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interest.

Applicant's family members in Pakistan and Afghanistan place a heavy burden on him to mitigate the disqualifying conditions and the security concerns. After he became a U.S. citizen, Applicant continued to make periodic trips to see his family in both Afghanistan and Pakistan. His contact with most family members is infrequent but he has frequent contact with his business partner brother. He has contact with his mother about once a month. His wife has continuous contact with her parents in Afghanistan. While the overall contacts with his family appear to be minimal, the mere existence of continued contacts with family members under the threatening circumstances shows that the family relationships are close and not casual.

The nature of the governments of Pakistan and Afghanistan, the threats from terrorist organizations operating in both countries, the disregard for human rights in both countries, and the growing hostility to the United States, increase Applicant's heavy burden to mitigate the disqualifying conditions and the security concerns. Applicant's family members have only normal contacts or relationships with the Pakistani or Afghan governments.

It is clear from the information that the relationship between Applicant and his family is not casual or infrequent. However, extremist and terrorists have threatened Applicant and his family members in the past. There could be circumstances in the future where Applicant is placed in a position to have to choose between the interests of his family members and the interest of the United States. Since these relationships are not casual or infrequent, the mitigating conditions at AG ¶¶ 8(a) and 8(c) do not apply to his family members.

The automobile import business with his brother is not a security concern because the business either lost money or is being curtailed by Applicant. His interest in the business is not so significant as to create a security concern. Applicant was a member of the KHAD, an organization under the Afghan security forces, when he was forced by threats to join as a youth. I find his membership in the organization as a teenager under threat not to be a security concern. Likewise, he and his friend who works for the Afghan bank are no longer close. They were close when they were roommates in college but have drifted apart since then. The relationship is now casual and infrequent, and no longer creates a security concern. Accordingly, I find for Applicant on SOR 1.j, 1.k, and 1.l.

Applicant left his family in Afghanistan and Pakistan for a better life. His frequent returns are only for limited periods to see his family and not because of any feeling of obligation to either country or the local governments. He established his deep sense of loyalty and admiration for the United States and its way of life. He sees the United States as offering him freedom, justice, tolerance, and an opportunity to reach his potential and care for his family. He has no allegiance or sense of loyalty to the Pakistani or Afghan governments, but he has a profound sense of belonging and obligation to the United States. He has lived in the United States for over half of his life, became a United States citizen, married another person from Afghanistan who is working to become a United States citizen, and has a son born in the United States. His only property or financial interests in Pakistan or Afghanistan is his share of the car import business. His loyalties and obligations are to the United States and not to Pakistan or Afghanistan.

However, a conflict of interest in this case is still likely. Applicant and his family were threatened with violence in the past and they can be threatened again. While Applicant has strong ties to the United States, he also has strong ties to his family. The past threats against Applicant's family in Pakistan and Afghanistan and the continued rise of terrorists and extremists in these countries may place Applicant in a position to have to choose between them and the interests of the United States. These factors present an unacceptable risk to the national interest if Applicant were to have access to classified information. In balancing all of the factors mentioned and considered above, I am not satisfied Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. AG ¶ 8(b) does not apply.

Applicant has not met his heavy burden to show that his family in Pakistan and Afghanistan do not cause a security concern. I conclude Applicant has not mitigated

security concerns for foreign influence arising from his family in Pakistan and Afghanistan. I am not satisfied Applicant's loyalty to the United States is sufficient to offset his loyalty to family members so that he can be expected to resolve any conflict of interest in favor of the United States. I resolve the Guideline B security issues against Applicant.

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 access to sensitive information 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 carefully considered all of the circumstances discussed above in regard to disqualifying and mitigating conditions as well as the following factors in light of the whole-person concept. The "whole-person concept" requires consideration of all available information about Applicant, not a single item in isolation, to reach a commonsense determination concerning Applicant's security worthiness. Applicant has a relationship with family in Pakistan and Afghanistan. This simple fact alone might be sufficient to establish security concerns over Applicant's vulnerability to coercion, exploitation, or pressure. However, mere family ties with people in foreign countries are not, as a matter of law, disqualifying under Guideline B. Whether an applicant's family ties in a foreign country pose a security risk depends on a commonsense evaluation of the overall factors and circumstances of the family ties.

I considered that Applicant left Pakistan and Afghanistan to seek his education and have a better life. He became a United States citizen, has a family in the United States, and he became a productive member of our society. He has strong loyalties to the United States and a strong lack of loyalty for Pakistan and Afghanistan. Applicant is a loyal U.S. citizen and he is willing to go in harm's way for the United States. He would be an excellent interpreter for the U.S. forces and would be a welcome addition for their units.

Decisions under these circumstances do not assign blame or presume misconduct by Applicant. However, it is not clear that Applicant can be expected to resolve any conflict of interest in favor of the United States simply because he has strong ties to the United States. The Government has a compelling interest in protecting sensitive information. This requires that any doubt about the risks associated with Applicant's foreign contacts be resolved in favor of the government. Applicant has frequent contact with his family in Afghanistan and Pakistan. There have been threats against his family in the past. His strong loyalty and allegiance to the United States and his lack of allegiance to either Afghanistan or Pakistan do not offset the risks inherent with his family members in Pakistan and Afghanistan. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has not met the heavy burden to mitigate the potential security concerns for foreign influence arising from his family members in Pakistan and Afghanistan. Applicant is not granted 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b -1.c;	Against Applicant
Subparagraph 1.d;	For Applicant
Subparagraph 1.e – 1.i:	Against Applicant
Subparagraph 1.j – 1.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge