



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



In the matter of:)	
)	
)	ISCR Case No. 12-07657
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

04/10/2013

Decision

LYNCH, Noreen A., Administrative Judge:

On August 20, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing the basis for its preliminary decision to deny her application for a security clearance, citing security concerns under Guideline B (Foreign Influence).¹ 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) implemented in September 2006.

Applicant received the SOR on September 4, 2012, and requested a review on the record. The Government requested a hearing before an administrative judge. The case was assigned to me on February 5, 2013. I convened the hearing as scheduled on March 8, 2013. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted five documents (AE A-E), which were

¹On March 5, 2013, the SOR was amended to include allegations under Guideline E (Personal Conduct).

admitted without objection. DOHA received the hearing transcript (Tr.) on March 18, 2013. Eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Afghanistan. (Tr. 12) The request and the attached documents are included in the record as Hearing Exhibit I. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations in ¶ 1.a-1.e. She denied the factual allegations in ¶ 2.a-2.f. Her admissions are incorporated in my findings of fact. I make the following findings:

Foreign Influence

Applicant is a 42-year-old woman who was born in Afghanistan and attended high school in her native land. In August 1993, she and her family fled to Pakistan. She came to the United States in 1997 with her family. Applicant became a naturalized American citizen on October 18, 2000. (GX 2) Her first marriage from June 15, 1993, ended in divorce in 1999. (Tr. 22) She remarried in 2004 and separated from her husband in 2004 and later divorced. Her third marriage occurred in approximately 2009 to a man who was also born in Afghanistan, but that marriage also ended. She has no children. (GX 5)

Applicant has worked as a linguist with mission essential companies since February 2005. She has a category 11 interim level security clearance. Applicant has lived and worked as a linguist on U.S. Army installations in Afghanistan. She described the many dangerous missions in Afghanistan that she has survived. Her team was ambushed in 2011. She has survived explosions in the field. (Tr. 28)

Applicant has three sisters who are citizens and residents of Afghanistan. One sister is a widow with five children. Applicant's sister needed a surgery and Applicant sent her approximately \$15,000. (AX D) Applicant has two other sisters who are citizens and residents of Afghanistan. Applicant has one brother-in-law who is a citizen and resident of Afghanistan.

In 2009, Applicant sent a friend, who is an Afghan citizen and resident, approximately \$20,000. Applicant claimed that he needed money for his construction business. (GX 2) She noted that she had no interest in the business. (GX) However, later in the hearing, she stated that he is the third husband that she married in 2009.

Applicant has no property in Afghanistan. She has no desire to permanently return to the country. Applicant is buying a home in the United States. (AE C) She has savings accounts and 401(k) assets in the United States. (Tr. 68)

At the hearing, Applicant explained that she maintains contact with one sister in Afghanistan. She also visited with her in Afghanistan when not working. (Tr. 73) She sometimes calls her other sisters.

Applicant's linguistic and cultural advisory skills have been noted in Certificates of Appreciation. (AX B) She went on missions with the U.S. Army. She has willingly put herself in danger on many occasions for years in order to help the United States.

There is no evidence in the record that Applicant breached any security policies or procedures while in Afghanistan. She has letters of appreciation for her work from 2005 to 2009 in Afghanistan. (AX A)

A commanding officer who has worked with Applicant in Afghanistan from May 2008 until January 2009 recommends Applicant for continued service. During that time, he writes that Applicant: "has acted as a trusted interpreter for many sensitive U.S. Special Forces operations throughout the rotation. Her ability to communicate effectively with host nation persons (male and female), while gleaning invaluable and often actionable intelligence was indispensable. She understands the mission of the U.S. Forces in Afghanistan, and works tirelessly to further that mission while acting as a cultural advisor. During medical capabilities missions she interacted with countless female Afghans, helping the mission to understand more about the operational environment. She requires little guidance and always operates with the commander's intent in mind. She is an integral part of the team and is widely respected due to dedication to duty and personal character." He states that Applicant is a U.S. citizen first and foremost. (AX A)

A military team leader described Applicant's contributions to mission accomplishment by stating:

Applicant did an excellent job in 2008. She provided linguist support during interrogations and other meetings. She played an integral part in assisting with building trust and rapport with new and existing contacts. She assisted the field surgical team during local national clinic days and traumas. She did an excellent job of comforting trauma patients, making it easier for the medical staff to do their job. Applicant never hesitated when asked to do anything and always made it a point to follow up with their tasks. (AX B)

Personal Conduct

Applicant completed a security clearance application on July 27, 2009. In response to Section 18: Relatives, Applicant listed a sister who is a citizen and resident of Afghanistan, but she did not disclose that she had two other sisters who are residents

and citizens of Afghanistan. Moreover, she did not disclose this information during her counterintelligence screening in July 2009.

Applicant did not disclose her third marriage to an Afghan citizen that occurred in 2009 when she completed Section 17: Marital Status, in the July 2009 security clearance application. She did not disclose the information during the 2009 counterintelligence screening. Nor did Applicant disclose on that same application, in response to Section 20C: Foreign Countries Visited, that she had traveled to Pakistan in February 2009 to get married.

Applicant claimed that she did not list her two Afghan sisters on the 2009 application because she did not know their address. She claimed that she was instructed to omit the information. (Tr. 32) At the hearing, Applicant stated that she did disclose their names on a 2010 security clearance application. There is no record of a 2010 security clearance application, and she does not have a copy of the application.

Applicant claimed that she did not list her third husband because he was abusive to her. She did have documentation (photos) that showed bruises. (AX E) She stated that he threatened her. She stated that she could not remember why she did not list her third husband on the 2009 application, but when further questioned, stated that the reason was that he was abusive and told her not to put his name on her security clearance application. Applicant later stated that there were too many applications and that she was confused. However, she stated that she told a special agent in Afghanistan about the third husband. Applicant received a phone call from her third husband in 2010. (Tr. 57) She now believes he is a U.S. citizen. (Tr. 70)

Applicant was not truthful on several occasions concerning her other two sisters and her third husband. She could have noted the names and omitted the addresses, I did not find her explanation credible concerning the advice that she was given. Also, she did not list her third marriage to an Afghan citizen. Moreover, he was the "friend" to whom she loaned money. During her counterintelligence screening, she did not note her third husband. Applicant even noted that she was just separated from her second husband and did not report that she was divorced. (GX 2)

Administrative Notice

I take administrative notice of the following facts about Afghanistan, including the fact that Afghanistan has been an independent nation since August 19, 1919, after the British relinquished control. A monarch ruled from 1919 until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to an agreement known as the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union which ensured Soviet forces withdrew by February 1989.

The mujaheddin were not a party to the negotiations for the Accords and refused to accept them. As a result, civil war continued after the Soviet withdrawal. In the mid 1990s, the Taliban rose to power largely due to the anarchy and warlordism that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama Bin Laden, Al Qa'ida, and other terrorist organizations.

After the September 11, 2001 terrorist attacks, demands to expel Bin Laden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001. A new democratic government took power in 2004. Despite progress made since the Taliban was deposed, Afghanistan still faces many daunting challenges. Among these challenges are defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic, and political infrastructure.

The Taliban, Al-Qa'ida, other insurgent groups, and anti-Coalition organizations continue to operate in Afghanistan, resulting in numerous attacks and deaths. Insurgents have targeted non-governmental organizations (NGOs), Afghan journalists, government workers, and UN workers. Instability along the Pakistan-Afghan frontier continued to provide al-Qa'ida with leadership mobility and the ability to conduct training and operational planning, targeting Western Europe and U.S. interests in particular. Kabul, in particular, has seen a rise in militant attacks, including rocket attacks, vehicle borne improvised explosive devices (IEDs), and suicide bombings.

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. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

The United States supports the efforts of the Afghan Government to establish a vibrant civil society, one that emphasizes democratic principles through a rule of law and creates accountable and transparent forms of government. The United States and its international partners remain committed to helping Afghans realize their vision for a country that is stable, democratic, and economically successful, and to an Afghan Government committed to the protection of women's rights, human rights, and religious tolerance.

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 occupy a position . . . that will give that person 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon an applicant meeting the criteria contained in the adjudicative guidelines (AG). 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 an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 an applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination of the loyalty of an applicant. 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 an 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 an 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). “[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

Guideline B (Foreign Influence)

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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 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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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(b).

Applicant has three sisters who are citizens and residents of Afghanistan. She maintains some contact with them. She visited one sister in Afghanistan when she was not working as a linguist. She gave money to a sister who needed surgery. She also loaned money in 2009 to a friend whom she married. This could create a potential conflict of interest between her security obligations and her desire to help him, only in a situation wherein he was taken hostage or otherwise threatened with harm if Applicant did not cooperate. Applicant has not maintained any regular contact with them; however, under either disqualifying condition, security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to her family members in Afghanistan. Based on this evidence, AG ¶¶ 7(a) and (b) are raised.

Since the Government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence 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).

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). Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States.

Security concerns under this guideline can be mitigated by showing that “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(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, security concerns can be mitigated under 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.”)

Applicant has been in the United States since 1997, and she has been a naturalized U.S. citizen since 2000. She has substantial interests in the United States. She has no desire to return to Afghanistan to live. Applicant maintains some contact with her sisters.

Applicant’s work as an interpreter and cultural advisor supported the U.S. military mission in Afghanistan, not the work of those who seek to destroy the growing democracy in Afghanistan. The new Afghanistan government relies upon the United States for support, both financially and militarily, as it moves forward with a new form of government. While Afghanistan’s human rights record under the Taliban was dismal and serious problems continue, its human rights record is slowly improving. Since working as an interpreter with the Army for several years, neither Applicant nor her family has been pressured by any organization to provide any type of information, classified or otherwise, about the United States.

In every case where a family member lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the

facts of this case, a heightened risk for exploitation, inducement, manipulation, pressure, or coercion is not substantial. Applicant has significant ties to the United States and few ties to Afghanistan. Applicant has no financial or property interests in Afghanistan. She wants to help the United States in its role in the redevelopment of Afghanistan. Applicant's ties with the United States are much stronger than her ties with Afghanistan. The Army holds her work as a translator and cultural advisor in high regard. She provided more than language interpretation skills. She explained nuances and practices that greatly assisted the military in accomplishing its mission. During her time in Afghanistan, she worked hard to help the Army. She developed a high level of trust with the Army and the Afghan locals.

Applicant spoke about her undivided loyalty to the United States. Based on her relationship and loyalty to the United States, she can be expected to resolve any conflict of interest in favor of the U.S. interest. She endured dangerous conditions in Afghanistan on behalf of the U.S. Army. She has no security violations. I find Applicant has such deep and longstanding relationships and loyalties in America that she can be expected to resolve any potential conflict of interest in favor of the United States. She has established application of AG ¶ 8(b).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation;
- (b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar

form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative:

Applicant did not disclose relevant information on several occasions to Government officials. She did not list two sisters who are citizens and residents of Afghanistan. Applicant provided no corroboration for her claim that she was advised not to list her sisters. She did not present any documentary information that she listed them on her 2010 security clearance application. She did not disclose that she had married an Afghan citizen in 2009. Applicant did not note that she went to Pakistan to marry her third husband. She noted that she was under a threat by him, but that does not discount the fact that she deliberately failed to disclose information. This affects her judgment, trustworthiness and reliability. She failed to disclose significant information. AG ¶ 16(a) and 16(b) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant was not truthful on several occasions concerning her other two sisters and her third husband. She could have noted the names and omitted the addresses, I did not find her explanation credible concerning the advice that she was given. Also, she did not list her third marriage to an Afghan citizen. Moreover, he was the "friend" to whom she loaned money. During her counterintelligence screening, she did not note her third husband. Applicant even noted that she was just separated from her second husband and did not report that she was divorced. (GX 2)

Applicant did not present any credible information to support any of the mitigating conditions under the personal conduct guideline. She has not met her burden to mitigate the security concerns under personal conduct. Her falsifications are material.

Whole-Person Concept

Under the whole-person concept, an 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. An 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.

The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his or her ties to a foreign country; his or her social ties within the U.S.; and, many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Certain circumstances weigh against Applicant in the whole-person analysis. First, Applicant has sisters who live in

Afghanistan. Terrorists or agents of the Tal'iban could attempt to use Applicant's family to obtain information. These connections raise the possibility of foreign influence. However, her connection to her sisters is minimal.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there. Afghanistan is a dangerous place because of the 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 with and assist the United States. The United States and Afghanistan 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.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant left Afghanistan many years ago with her family. She has been a naturalized U.S. citizen since 2000. She is a mature person, who has lived in the United States, and created a life in the United States. She has a sense of patriotism toward the United States, as witnessed by her dedication and work with the U.S. Army. There is no evidence that she has ever taken any action that could cause potential harm to the United States. Her military supervisors, who work with her daily in a war zone, praised her work in the cause of freedom in Afghanistan. She has no desire to live in Afghanistan. She has established her life in the United States. She is buying a home in the U.S.

Applicant is a loyal U.S. citizen who has worked under dangerous conditions in support of our national defense. The Appeal Board has held that "generally, an applicant's statements, by themselves, as to what he [or she] would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."²

Applicant served the United States in a dangerous, high-risk situation and her character references establish her significant contributions to U.S. national security. While contribution to a company is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case. No. 05-03846 at 6 (App. Bd. Nov. 14, 2006):

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by applicant's more immediate disqualifying conduct or circumstances. See, e.g. ISCR Case. No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No 02-10113 at 4 (App. Bd. Mr. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30,

²ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to the nation's security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report to a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence. The complicated state of affairs in Afghanistan places a significant burden on Applicant to demonstrate that her foreign family member does not pose an unacceptable security risk. She has met that burden.

However, with respect to personal conduct security concerns, Applicant has not met her burden. She did not disclose material information on her security clearance application and during a counterintelligence screening. She did not present credible information that she made good-faith efforts to correct the misleading information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 2.a through 2.f:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge