



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



In the matter of:)
)
) ISCR Case No. 12-10605
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel

For Applicant: *Pro se*

05/22/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record in this case, I conclude that Applicant failed to mitigate the Government’s security concerns under Guideline B, Foreign Influence. His eligibility for a security clearance is denied.

Statement of the Case

Applicant signed and certified an electronic questionnaire for investigation processing (e-QIP) on June 16, 2010. On September 25, 2011, he submitted another e-QIP, which he then annotated with hand-written initialed changes and resubmitted, along with a Standard Form 86 certification on October 4, 2011. On August 30, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DOD for SORs issued after September 1, 2006.

On December 10, 2012, Applicant answered the SOR and requested a decision without a hearing from an administrative judge at the Defense Office of Hearings and Appeals (DOHA). The Government compiled its File of Relevant Material (FORM) on March 19, 2013. The FORM contained documents identified as Items 1 through 8. Additionally, in the FORM, the Government requested that the administrative judge take administrative notice of certain facts about Afghanistan and Pakistan.¹ I marked the Government's administrative notice documents as Hearing Exhibit (H.E.) A.

On March 19, 2013, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on April 23, 2013. His response was due on May 23, 2013. Applicant timely filed additional information in response to the FORM. Department Counsel did not object to the information in Applicant's response to the FORM. On May 14, 2013, the case was assigned to me for a decision. I marked Applicant's response to the FORM as Item A and entered it in the record.

Findings of Fact

The SOR contains 13 factual allegations under AG B, Foreign Influence (SOR ¶¶ 1.a. through 1.m.). In his Answer to the SOR, Applicant admitted all allegations, with the exception of the allegation at SOR ¶ 1.b., which he denied. Applicant's admissions are entered as findings of fact.

After a thorough review of the record in the case, including exhibits, relevant policies, and the applicable adjudicative guideline, I make the following additional findings of fact:

Applicant is 57 years old. He was born and raised in Afghanistan. In about October 1977, when he was 22 years old, Applicant left Afghanistan and traveled to Iran, where he planned to study agriculture and the German language. When the Iranian revolution occurred in 1978, Applicant then traveled to Germany, where he remained for approximately three years. In 1981, he immigrated to the United States on a refugee visa. Applicant became a U.S. citizen in August 1987. He is employed by a government contractor, and he seeks a security clearance. (Item 4; Item 5; Item 7.)

Applicant has been married twice. In 1987, he traveled to Pakistan, where he married his first wife, who then accompanied him to the United States. Applicant sponsored his first wife for U.S. citizenship. In 1988 and in 1992, two children were born to the marriage. The children were born in the United States and are U.S. citizens. Applicant's wife began an affair with another man in 2000. Applicant and his first wife divorced in 2003. (Item 4; Item 8.)

¹ The Government provided a summary document, drawn from ten official U.S. documents, containing facts about Pakistan. Additionally, the Government provided a summary document, drawn from nine official U.S. documents, containing facts about Afghanistan.

After his divorce, Applicant became depressed and traveled to Afghanistan for a short vacation. He intended initially to stay only a few months to rebuild the family house. However, he remained longer, used his savings to support himself, and also received some support from one of his brothers. In 2007, he traveled to Pakistan, where he married his second wife, a citizen of Afghanistan living in Pakistan. After the marriage, he remained in Pakistan and started a business with one of his brothers. In the summer of 2007, he briefly returned to the United States to earn money to finance his life in Afghanistan. (Item 5; Item 7; Item 8.)

In about October of 2007, Applicant returned to Pakistan. A month later, he returned to Afghanistan, where he lived until May 2008, supporting his family by working at a business. In June 2008, he closed the business and moved to Pakistan, where he resided with his wife's family until early 2010. (Item 5.)

In 2010, Applicant sought employment in Afghanistan as a linguist. He was advised that he might obtain a better-paying position if he returned to the United States and applied for a linguist position. Applicant then returned to the United States. After applying for a linguist position with a government contractor, he was denied a security clearance for force protection reasons. (Item 5; Item 7.)

Applicant returned to Pakistan, where he lived with his family from December 2010 until September 2011. He then returned to the United States with his wife and children. (Item 7.)

Applicant's wife, with whom he resides in the United States, is a citizen of Afghanistan. Applicant and his wife have two young children, born in Pakistan, who are U.S. citizens. Applicant's wife's citizenship is alleged at SOR ¶ 1.a. (Item 1; Item 4.)

The SOR alleges at ¶ 1.b. that Applicant's step-child is a citizen of Afghanistan currently living in the United States. In his answer to the SOR, Applicant denied the allegation and stated that his step-son was living in Afghanistan. In his response to the FORM, Applicant further explained that his 21-year-old step-son had been denied a visa to enter the United States and was living in Afghanistan.² (Item 1; Item 4; Item A.)

Applicant has three sisters who are citizens of Afghanistan and who reside in Pakistan. Applicant also has two brothers-in-law who are citizens of Afghanistan and who reside in Pakistan. These facts are alleged at SOR ¶¶ 1.c. and 1.d. (Item 5.)

Applicant has a brother-in-law who is a citizen and resident of Afghanistan. This individual is a liquid gas distributor. The citizenship and residency of Applicant's brother-in-law is alleged at SOR ¶ 1.e. (Item 1; Item 5.)

² In his personal subject interview of October 13, 2011, Applicant told the investigator that his wife and his step-daughter, both citizens of Afghanistan, had come to the United States with him and were living in his household. (Item 8.)

Three of Applicant's brothers are citizens and residents of Afghanistan. A fourth brother is a citizen of Afghanistan currently residing in Pakistan. These facts are alleged at SOR ¶¶ 1.f. and 1.h. (Item 1; Item 5.)

Applicant's sister-in-law, mother-in-law, and three cousins are citizens and residents of Afghanistan. These facts are alleged at SOR ¶¶ 1.g., 1.i., and 1.j. (Item 1; Item 5.)

The SOR alleges at ¶ 1.k. that Applicant owns one half acre of land in Afghanistan with a value of \$40,000. In his answer to the SOR, Applicant admitted owning the land, but stated that it had a value of \$4,000. In his response to the FORM, he further explained that the land was agricultural but had no water or irrigation facility on it. (Item 1; Item 3; Item A.)

The SOR alleges at ¶ 1.l. that Applicant owns a share in an acre of land in Afghanistan, along with the other members of his family, with a value of \$20,000. In his answer to the SOR, Applicant admitted owning a share in the land, but he stated that the value of the acre is \$6,000. In his response to the FORM, Applicant stated that his interest in the land cannot be separated from the ownership interests of the other members of his family, and he cannot sell his individual interest. (Item 1; Item 3; Item A.)

The SOR alleges at ¶ 1.m. that Applicant maintains a bank account in Germany with a value of approximately \$3,500. In his response to the FORM, Applicant stated that the account dated to his student days in Germany in the 1970s. He stated that there had been no activity in the account since his student days. (Item 1; Item A.)

I take administrative notice of facts about Pakistan. The facts in the following summary were provided by Department Counsel to Applicant and to me.

Pakistan is a parliamentary republic in South Asia with a population of over 170 million people. Pakistan is a low-income country, with a population that is 97% Muslim. Pakistan has extreme poverty and is underdeveloped. Its economy remains vulnerable to internal security concerns.

After September 11, 2001, Pakistan pledged its alliance with the U.S. in counterterrorism efforts and made a commitment to eliminate terrorist camps on its territory. Despite these efforts, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan, the Khyber Pakhtunkhwa (Kpk) (formerly known as the Northwest Frontier Province (NWFP)), and in the Balochistan Province, which borders Iran and Afghanistan. The Pakistani Taliban (Tehrik-i-Taliban "TTP"), al-Qa'ida extremists, foreign insurgents, and Pakistani militants have re-exerted their hold over areas in the FATA and NWFP, and the Pakistani Taliban also used the FATA to plan attacks against

civilian and military targets across Pakistan. Al-Qa'ida leadership in Pakistan supported militants in conducting attacks in Afghanistan and provided funding, training, and personnel to facilitate terrorist and insurgent operations.

In addition to the Taliban, the FATA in Pakistan continues to be a vital sanctuary to al-Qa'ida and a number of foreign and Pakistan-based extremist groups. Al-Qa'ida and other Afghan extremist groups exploit that operating environment to plan operations, direct propaganda, recruit and train operatives, and raise funds with relative impunity.

Overall, Pakistan has intensified counterinsurgency efforts, but its record with dealing with militants has been mixed. Pakistan has demonstrated determination and persistence in combating militants it perceives to be dangerous to Pakistan's interests, particularly those involved in attacks in settled areas, but it maintains its historical support to the Taliban, has not consistently pursued militants focused on Afghanistan, and still considers militant groups to be important to its efforts to counter India's military and economic advantages.

The U.S. Department of State has defined terrorist safe havens as ungoverned, under-governed, or ill-governed areas of a country and non-physical areas where terrorist groups that constitute a threat to U.S. national security interests are able to organize, plan, raise funds, communicate, recruit, train, and operate in relative security because of inadequate governance capacity, political will, or both. The U.S. Department of State has concluded that, despite increased efforts by Pakistani security forces, al-Qa'ida terrorists, Afghan militants, foreign insurgents, and Pakistani militants continue to find safe haven in portions of Pakistan's FATA, NWFP, and Baluchistan, and have operated in those areas to organize, train, and plan attacks against the United States and its allies in Afghanistan, India, and Europe.

On May 1, 2011, U.S. special forces personnel raided a large al-Qa'ida compound located in a residential neighborhood in Pakistan and shot and killed al Qa'ida leader Osama bin Laden.

The Department of State warns U.S. citizens of the risks of traveling to Pakistan in light of the threat of terrorist activity, specifically the presence of al-Qa'ida, Taliban elements, and indigenous militant sectarian groups that pose a danger to American citizens. Terrorists and their sympathizers have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit. Suicide bombings and attacks occur throughout Pakistan on a regular basis. Also, since 2007, several American citizens throughout Pakistan have been kidnapped.

The human rights situation in Pakistan remains poor. Major problems include extrajudicial killings, torture and disappearances. Additional problems include poor prison conditions, arbitrary arrest, widespread government corruption, rape, honor crimes, and widespread trafficking in persons. The military operations in the FATA and NWFP resulted in the deaths of approximately 1,150 civilians, and militant attacks in the FATA and NWFP killed 825 more civilians. The Pakistani government also maintains several domestic intelligence services that monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicated that authorities routinely used wiretaps and intercepted and opened mail without the requisite court approval, as well as monitoring mobile phones and electronic messages.

In addition to al-Qa'ida, the Taliban, and other insurgents and militants, the foreign terrorist organization Lashkar e-Tayyiba (LT) also operates out of Pakistan. The LT is the prime suspect for the November 2008 Mumbai attacks and is one of the largest and most proficient of the traditionally Kashmiri-focused militant groups. The Haqqani Network, an extremist organization operating as a strategic arm of Pakistan's Inter-Services Intelligence Agency, is also operating from Pakistan with impunity. On September 7, 2012, the United States formally declared the Haqqani Network a Foreign Terrorist Organization.

I also take administrative notice of the following facts about Afghanistan. The facts in the following summary were provided by Department Counsel to Applicant and to me.

Afghanistan has been an independent nation since August 19, 1919, after the British relinquished control. 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 that Soviet forces would withdraw by February 1989.

The mujaheddin were not a party to the negotiations for the Accords and refused to accept them. As a result, a civil war continued after the Soviet withdrawal. In the mid-1990s, the Taliban rose to power largely due to the anarchy and the division of the country among warlords 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 since the mid-1990s, to al-Qa'ida generally, and to other terrorist organizations.

After the September 11, 2001, terrorist attacks, U.S. demands that Afghanistan 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.

After a few years of control by an interim government, the first democratic election took place in October 2004, and a second round of elections took place in 2009. Despite this and other progress made since the Taliban was deposed, Afghanistan still faces many daunting challenges, principally defeating terrorists and insurgents, recovering from over three decades of civil strife; and rebuilding a shattered physical, economic and political infrastructure.

Human rights problems included extrajudicial killings; torture and other abuse; poor prison conditions; widespread official impunity, ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; prolonged pretrial detention; judicial corruption; violations of privacy rights; restrictions on freedom of the press, limits of freedom of assembly; restrictions of freedom of religion, including religious conversions; limits on freedom of movement; official corruption; violence and societal discrimination against women; sexual abuse of children; abuses against minorities; trafficking in persons; abuse of worker rights; and child labor.

There were numerous reports that the government – or its agents – committed arbitrary or unlawful killings. Additionally, the Taliban-led insurgency has become increasingly dangerous and destabilizing. The Taliban's expansion of influence into northern Afghanistan since late 2007 has made the insurgency a countrywide threat. The insurgency has also increased in geographic scope and frequency of attacks and has shown greater aggressiveness and lethality. This lack of security in many areas, coupled with a generally low governmental capacity and competency, has hampered efforts to improve governance and extend development. The Taliban has been successful in suppressing voter turnout in elections in key parts of the country.

Despite the loss of some key leaders, insurgents have adjusted their tactics to maintain momentum following the arrival of additional US troops.

Afghan leaders also continue to face the eroding effects of official corruption and the drug trade. Criminal networks and narcotics cultivation constitute a source of funding for the insurgency in Afghanistan. Streams of Taliban from across the border in Pakistan, along with funds gained from narcotics trafficking and kidnapping, have allowed the insurgency to strengthen its military and technical capabilities.

In addition to the Taliban, al-Qa'ida and other insurgent groups and anti-Coalition organizations continue to operate in Afghanistan resulting in numerous attacks and deaths. Insurgents have targeted NGOs, Afghan journalists, government workers, and UN workers. Even the Afghan capital, Kabul, is considered at high risk for militant attacks, including rocket attacks, vehicle-borne IEDS, and suicide bombings.

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.

Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical, and travel in all areas of Afghanistan remains unsafe, due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of terrorist attacks.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “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 an 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 and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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 in obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶ 6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

A Guideline B decision assessing the security worthiness of a U.S. citizen with close familial contacts in Pakistan and Afghanistan must take into consideration the unstable political situations in both countries in which terrorist groups target U.S. interests with impunity. Under these circumstances, American citizens with immediate

family members who are citizens or residents of Pakistan and Afghanistan could be vulnerable to coercion, exploitation, or pressure.

I have considered all of the disqualifying conditions under the foreign influence guideline. The facts of Applicant's case raise security concerns under disqualifying conditions AG ¶¶ 7(a), 7(b), 7(d), and 7(e).³

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. However, the facts must demonstrate a risk higher than normally occurs when a family member lives under a foreign government. The activities of al-Qa'ida, Taliban, and other militant groups in Pakistan and Afghanistan, and the two countries' mixed record of dealing with these groups, are sufficient to establish the "heightened risk" required in AG ¶ 7(a).

In his answer to the SOR, Applicant denied the allegation at SOR ¶ 1.b., which alleged that his step-child, a citizen of Afghanistan, was currently residing in the United States. In his response to the FORM, Applicant identified the step-child as his step-son and asserted that the individual was living in Afghanistan. However, when he was interviewed by an authorized investigator in 2011, he reported that his wife and step-daughter, both citizens of Afghanistan, were living with him in the United States. The record is therefore ambiguous about the identity of the step-child and whether that person is residing in the United States.

However, the record clearly establishes that Applicant's three sisters, one brother, and two brothers-in-law are citizens of Afghanistan currently residing in Pakistan. Applicant's three brothers, sister-in-law, brother-in-law, mother-in-law, and three cousins are citizens and residents of Afghanistan. When family ties to a foreign country are alleged, the totality of an applicant's family ties as well as each individual family connection must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant's close relationships and contacts with his family members who are citizens of Afghanistan residing in Pakistan and Afghanistan, countries with poor human rights records and a high risk of terrorism, are sufficient to establish AG ¶¶ 7(a) and 7(b).

Moreover, Applicant shares living quarters with his wife, a citizen of Afghanistan, who also has family contacts with citizens and residents of Afghanistan. Applicant's familial relationships and contacts with his relatives and his wife's relatives create a

³ AG ¶ 7(a) reads: "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(b) reads: "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(d) reads: "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." AG ¶ 7(e) reads: "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."

heightened risk of foreign exploitation, inducement, manipulation, or coercion. Additionally, Applicant has interests in land in Afghanistan and a bank account in Germany, which could also expose him to a heightened risk of foreign influence or exploitation.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply. If "the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual" then AG ¶ 8(f) might apply to Applicant's land interest in Afghanistan and his bank account in Germany.

AG ¶ 8(a) does not apply in mitigation to the facts of this case. Applicant has 17 immediate family members who are citizens of Afghanistan. Six of those individuals are residents of Pakistan.

AG ¶¶ 8(b) and 8(c) also do not apply to this case. Since becoming a U.S. citizen in 1987, Applicant has spent major portions of time living and working in Pakistan and Afghanistan. He resided in the United States, earned money to live on, and then returned to Afghanistan and Pakistan to reside with his family members there. Applicant's loyalty and sense of obligation to his family members is strong and enduring. From my careful review of the record in this case, it is clear that Applicant's relationships with his family members in Afghanistan and Pakistan are neither casual nor infrequent. It is also not clear to me that Applicant would resolve any conflict of interest in favor of the United States.

Applicant has two interests in real property in Afghanistan. He owns one parcel of land himself, and he shares an interest in the other with his family members. He also has a bank account in Germany, which he established many years ago when he was a student there. The record suggests that Applicant has worked hard to acquire income to support his immediate family, and he relies upon his brothers and other extended family members for support and for collaborative business activities. It is not clear that Applicant's possession of these assets is routine or that he might not be required to leverage them to support himself and his family. These assets could be a source of

conflict and they could be used to influence, manipulate, or pressure Applicant. Accordingly, I conclude that AG ¶ 8(f) does not apply in mitigation.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 considered the potentially disqualifying and mitigating conditions in light of the whole-person concept and all the facts and circumstances surrounding this case. Applicant became a U.S. citizen in 1987. Since that time, he has traveled to Afghanistan and Pakistan to work, to marry, and to live with relatives there. He returned to the United States to work as a government contractor and to seek a security clearance. The record in this case reveals foreign contacts and connections that continue to raise security concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, evaluating all the evidence in the context of the whole person, and mindful of my obligation to decide close cases in favor of national security, I conclude Applicant has failed to mitigate security concerns based on foreign influence. It is evident from the record in this case that Applicant has failed to carry his burden of persuasion to demonstrate that his foreign contacts do not raise security concerns that could preclude entrusting him with sensitive and classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraphs 1.a. - 1.m.: Against Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge