



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



In the matter of: )  
)  
) ISCR Case No. 12-11092  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: André Nance, Esq.  
Gregory Burns, Esq.  
Michael Lubowitz, Esq.

05/15/2013

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a native of Afghanistan, who came to the United States as a refugee in March 2004 and acquired his U.S. citizenship in December 2010. He was targeted by an Afghan warlord in 2003 due to his human rights work in Afghanistan, but that warlord is no longer in a position to threaten him. Foreign influence concerns are heightened because Applicant has one sister, two uncles, and two cousins, who are resident citizens of Afghanistan, and an uncle and a cousin work for the Afghan government. Also, Applicant's other sister is an Afghan citizen residing in Pakistan. Yet, Applicant has shown through his service to the United States under dangerous conditions as a translator that he can be counted on to act consistent with U.S. interests. Clearance granted.

## Statement of the Case

On October 4, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, and explaining why it was unable to grant a security clearance to Applicant. The 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 the DOD on September 1, 2006.

Applicant responded to the SOR on November 7, 2012. While he indicated he would be willing to elaborate further on the issues in person, he did not formally request a hearing. On November 24, 2012, Department Counsel requested a hearing pursuant to paragraph E3.1.7 of the Directive. On January 7, 2013, the case was assigned to me to conduct a hearing and determine whether or not it is clearly consistent with the national interest to grant a security clearance to Applicant. Scheduling of the hearing was delayed due to Applicant's deployment.

On March 1, 2013, I scheduled a hearing for March 25, 2013. On March 15, 2013, counsels for Applicant entered their appearances. I convened the hearing as scheduled. Three Government exhibits (GEs) 1-3 and eight Applicant exhibits (AEs) A-H were admitted into evidence without objection, and Applicant testified. His verbatim testimony is reflected in a transcript (Tr.) received on April 4, 2013. Also, at the Government's request, I agreed to take administrative notice of pertinent facts relating to the Islamic Republic of Afghanistan (Afghanistan) and Pakistan, including their respective foreign relations with the United States, subject to my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See e.g., ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007).

The record was held open for two weeks for Applicant to submit additional documentary exhibits and to propose facts appropriate for administrative notice pertaining to Afghanistan and Pakistan. On April 8, 2013, Applicant submitted through counsel five character reference letters (AEs I-M); a request for administrative notice dated April 8, 2013; and a summary of proposed facts, analysis, and argument. Department Counsel filed no objections by the April 26, 2013, due date. AEs I-M were admitted as full exhibits, and I took administrative notice as requested by Applicant.<sup>1</sup>

The respective requests for administrative notice and source documentation were included in the record as hearing exhibits.<sup>2</sup> The facts administratively noticed are set forth below.

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<sup>1</sup>The analysis and argument of Applicant's counsels, dated April 8, 2013, was accepted as a supplement to their closing argument of March 25, 2013.

<sup>2</sup>The Government's and Applicant's administrative notice requests and source documents were

## Findings of Fact

The SOR alleges under Guideline B, foreign influence, that as a result of Applicant's work as a translator for a human rights nongovernmental organization (NGO), he and his family were threatened by Afghan warlords and that after his mother was killed in a November 2003 attack, Applicant sought refugee status in the United States (SOR 1.a). Also, Applicant allegedly has several relatives, who are Afghan citizens residing in Afghanistan: one sister (SOR 1.b); two uncles, one of whom works for an Afghan commission (SOR 1.d), and two cousins, one of whom is employed by a ministry of Afghanistan's government (SOR 1.e). Applicant's other sister is an Afghan citizen residing in Pakistan (SOR 1.c).

In his Answer, filed *pro se*, Applicant admitted the factual allegations, but he denied he could be influenced to the detriment of his commitment to the United States. The warlord who threatened him in 2003 is no longer in power in Afghanistan. Also, Applicant was not threatened during his recent travel to Afghanistan in July 2011 or his deployment in Afghanistan since July 2012. Applicant's admissions to the threats from Afghan warlords that contributed to him fleeing Afghanistan, and to the foreign residency and citizenship of some family members, including one uncle and one cousin with connections to the Afghan government, are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 42-year-old defense contractor employee, who has been deployed as a linguist and cultural advisor for the U.S. military in a war zone since July 16, 2012. (Tr. 65.) He has a master's degree in law earned at a private university in the United States in June 2007, but he has not taken a bar examination to practice law in the United States. (GEs 1-2; Tr. 31-32.)

Applicant was born in Afghanistan in October 1970. He is the eldest son of four children (two sons and two daughters) born to Afghan native citizens. His father was a physician in the employment of the Afghan government while his mother did not work outside the home. Applicant's father is presumed to have died around 1982. He was arrested by Communist (Soviet) sympathizers that governed Afghanistan in the early 1980s and was not seen again. (GEs. 1-2; Tr. 31, 35, 88, 95.)

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incorporated in the record as hearing exhibits. The Government's request was based on 14 publications, consisting of ten documents of the U.S. State Department; a February 2, 2012 statement from the Director of National Intelligence; a September 22, 2011 statement of Admiral Mullen, then Chairman of the Joint Chiefs of Staff; a March 27, 2009 transcript of an interview of Admiral Mullen; and a May 2, 2011 White House press release. Applicant's request was based on four documents: the State Department's *Country Specific Information: Afghanistan*, dated January 28, 2013; the DOD's December 2012 report to Congress, *Report on Progress Toward Security and Stability in Afghanistan*; an April 3, 2013 article published in *NATO Review*; and on the *Chicago Summit Declaration of Afghanistan*, issued May 21, 2012.

Applicant graduated from high school in Afghanistan in August 1988. He avoided mandatory military service for Afghanistan by returning to his home province. (GE 1.) Sometime in the late 1980s or early 1990s, Applicant was kidnapped and held for four days by Shia mujaheddin in an attempt to extort money from his uncle H, who operated a NGO that distributed medicine. Applicant was released after pressure from the local community.<sup>3</sup> (GE 2; Tr. 89-92, 119.) In November 1990, Applicant moved with his aunt to Pakistan for medical care and to study. While in Pakistan, he received electrical technician training in a manpower program. In May 1992, Applicant returned to Afghanistan. As the older son, he had traditional responsibilities with regard to his sister's marriage. (Tr. 116.)

From August 1994 to September 1998, Applicant pursued legal studies at a university in Afghanistan. (GE 1; Tr. 31-32.) Applicant married his spouse, also a native of Afghanistan, in February 1996.<sup>4</sup> (GE 1; Tr. 95.) She and Applicant had their first child, a son, in February 1997. (GE 1; Tr. 33-34.)

From January 1999 to January 2002, Applicant lived in Pakistan. With a professor from his university in Afghanistan and other Afghan professionals, Applicant established a minority human rights organization in Pakistan for the education of Afghan refugees. (Tr. 38, 93.) Applicant's spouse and young son eventually joined him in Pakistan, and in March 2000, their second child, a daughter, was born. In January 2002 Applicant returned to Afghanistan, initially to assist a U.S.-based, nonprofit NGO involved in human rights work. He accepted a permanent position as a translator, although his work evolved into documenting human rights abuses for the NGO. (GE 2; Tr. 39.) Applicant's spouse gave birth to a daughter in February 2002 in Pakistan, and Applicant spent from February 2002 to April 2002 in Pakistan with his family in preparation for their repatriation to Afghanistan. (GEs 1, 2.)

Between 2002 and 2003, Applicant and a colleague (now the NGO's current Asia advocacy director) together interviewed hundreds of Afghans in Afghanistan for the human rights NGO. They often faced dangerous situations, including in September 2002 when they were detained by armed men, who started questioning them about their activities. (AE M; Tr. 40.) The situation resolved, but not before one of the gunmen fired shots in the air. Applicant responded calmly and obtained the assistance of the local governor to facilitate their release. In March 2003, while Applicant and his NGO

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<sup>3</sup>Applicant indicated on his counterintelligence screening questionnaire in June 2012 that he was in Pakistan between November 1990 and March 1992, and that the kidnapping took place around 1991 when he was returning to his native province. (GE 2.) At his hearing, he initially testified that the incident took place around 1991. (Tr. 89.) On redirect, he testified that the incident "should have happened after [he] came from Pakistan—'88 something like that." (Tr. 119.) The evidence does not clearly establish that he was in Pakistan before 1990. He could have been kidnapped when he fled Afghanistan's capital for his native province to avoid military service in the late 1980s. It also could have happened in 1992 on his return to Afghanistan from Pakistan, even though Applicant now denies that it occurred in 1992.

<sup>4</sup>Applicant's spouse's father worked on infrastructure construction in Afghanistan before his death in 1985. Her mother, who did not work outside the home, died in 2011. (GE 2; Tr. 98.)

colleagues were in southeastern Afghanistan interviewing Afghan civilians about local security, their car was approached by two men on a motorcycle. The man on the back of the motorcycle pointed a gun at the head of one of Applicant's colleague before speeding away. Applicant calmly and professionally informed regional military and civilian leaders about the incident and then arranged for the evacuation of his colleagues. (AE M.)

Applicant's work documenting human rights abuses and corruption in Afghanistan brought threats from local government commanders (warlords) against him and his family members. After he issued a report in 2003 chronicling human rights violations, including lawless behavior by the son of a chief of police,<sup>5</sup> Applicant went to India temporarily as a precaution for his safety. He traveled on an Afghan passport issued on July 16, 2003, which was valid for one year. His mother, spouse, and children were in a rural area of Afghanistan for a 10-day vacation. While Applicant was in India, the organization released his report, and the son of the local police chief came to Applicant's house with some militia looking for him. They left without incident on finding that Applicant was not there,<sup>6</sup> but with the aid of the United Nations High Commission for Refugees (UNHCR), Applicant, his spouse, their children, and his mother, fled to Pakistan. Applicant intended to return to Afghanistan once it was safe for him to do so. (GE 2; AEs J, M; Tr. 44-50.) Applicant no longer views these warlords as a threat to him or his family because the warlords have been disarmed and their militias dispersed. (Tr. 48.)

In Pakistan, Applicant was introduced to a U.S.-based scholars-at-risk program. He applied for, and was granted, a fellowship at a private university (university X) in the United States. While waiting for a visa to the United States, Applicant traveled within Pakistan documenting violations for the human rights NGO. In November 2003, Applicant was crossing a street with his immediate family in Pakistan when his mother was struck and killed by a speeding vehicle. The driver made no attempt to brake and did not stop after the accident. Applicant believes he may have been the intended target. (GEs 2, 3; Tr. 35, 52, 94.) Applicant traveled with his spouse and children to Afghanistan for a week for his mother's funeral. (GE 2; Tr. 52.)

With the safety of his immediate family in mind, Applicant applied for resettlement through the UNHCR. They were approved for refugee status and given the option of leaving Pakistan in one week for either Canada or Sweden. Applicant wanted to bring his family to the United States because he had developed friendships within the human rights community, had the fellowship opportunity at university X, and believed the United States offered the best future for himself and his children. He was informed that it could

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<sup>5</sup>The chief of police, whose son was implicated in lawless behavior, had family ties to the core commander (de facto ruler of the warlords) of the province. (Tr. 45, 110.) Applicant understands that the core commander has been disarmed and is now a member of Afghanistan's parliament; that the police chief went back to his local district once his militia had dispersed; and that the son left Afghanistan for the Arabian Peninsula. (Tr. 48, 111.) Applicant testified that none of his extended family members ever came under pressure or threat from these warlords. (Tr. 46, 49, 85-86.)

<sup>6</sup>Although sister F and an uncle lived nearby, they were not disturbed by the militia. (Tr. 47.)

take several months for a U.S. visa. With the help of the human rights NGO and the scholars-at-risk program, the visa was issued in December 2003. In March 2004, Applicant, his then pregnant spouse, and their three children came to the United States as refugees. (GEs 2, 3; AE M; Tr. 52-55.) In July 2004, Applicant's youngest child, a son, was born in the United States. (GEs 1, 2.) Shortly thereafter, Applicant's spouse began taking English language classes. (Tr. 56.)

With funding from the scholar-at-risk program, Applicant was a research fellow in human rights at university X's law school from April 2004 to August 2005. He acquired his U.S. green card at that time. (GE 1; AE G; Tr. 32, 55.) In September 2005, Applicant's fellowship was transferred to another university, where he continued his work in human rights. In October 2005, Applicant traveled to Europe to speak and fundraise for the human rights NGO. He took the opportunity to visit his brother and sister-in-law in the Netherlands. His brother had immigrated to that country around 2000. (GE 1.)

Applicant's fellowship ended in December 2005 due to lack of funds. Applicant supported his family through on-call translation work for the human rights NGO from April 2004 until June 2006, and he received a \$10,000 cash award from the organization for his work. From June 2005 to February 2006, he performed translation duties for another organization as well as for the human rights NGO. (GEs 1, 2.)

Applicant pursued full-time studies toward his LL.M degree at university X's law school from August 2006 to June 2007. (GE 1: Tr. 57.) He financed his graduate degree through scholarships, loans, and his spouse's income from her employment in retail. (GE 2.) After he earned his degree, Applicant was unemployed until November 2007, when he began working as a legal analyst for a nonprofit human rights documentation center. Applicant and his family moved to their present locale for his new position, and he enrolled his children in the local public school system. Applicant and his spouse have since been involved in their children's school and their neighborhood activities. (GE 1: Tr. 57.)

In May and June 2009, Applicant traveled to Europe on business, to interview Iranian expatriate victims about human rights violations in Iran. Applicant took the opportunity to visit his brother in the Netherlands. (GEs 1, 3.)

In December 2010, Applicant, his spouse, and their children born abroad, became naturalized U.S. citizens.<sup>7</sup> (GE 3; Tr. 31.) In April 2011, Applicant acquired a

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<sup>7</sup>Applicant indicated on his June 2012 e-QIP that he has never held dual citizenship. (GE 1.) No evidence was presented to show that he took any steps to formally renounce his Afghan citizenship after he became a U.S. citizen. At the same time, it is unclear whether Afghanistan recognizes dual citizenship. The U.S. State Department reports in its *Afghanistan, Country Specific Information*, dated January 28, 2013, "U.S. citizens who are also Afghan nationals do not require visas for entry into Afghanistan. Likewise, for U.S. passport holders born in Afghanistan (place of birth listed as Afghanistan on their passport), a visa is not required for entry." Applicant acquired a visa to enter Afghanistan on his U.S. passport in 2011, although he might have been allowed entry without one since his birth in Afghanistan is noted on his U.S. passport. (GE 2.)

U.S. passport. (GEs 1, 2.) In July 2011, Applicant was laid off because the small, nonprofit organization could no longer afford to pay him. Applicant traveled to Afghanistan in late June 2011 for the U.S.-based human rights NGO to research the vetting process for senior appointees of the Afghan government. (Tr. 60.) While in Afghanistan, Applicant visited with the elder of his two sisters (sister F), a homemaker, and with his two uncles.<sup>8</sup> He wanted to express his condolences to his uncles on the passing of their mother (Applicant's grandmother). Applicant contacted his relatives beforehand about his impending visit, although he waited until they met to inform them that he was in Afghanistan for the human rights NGO. (Tr. 61-62.) Applicant denies any unusual or unexpected contacts with foreign nationals when he was in Afghanistan. (Tr. 62.)

On Applicant's return to the United States in August 2011, he resumed part-time translation work as a consultant for the human rights NGO out of his home while looking for full-time employment. (GEs 1, 2; Tr. 62.) Aware of the risks to his personal safety, Applicant applied to work as a cultural advisor and linguist in service to the U.S. military. (Tr. 63.) He submitted as qualifications his facility in four languages (Dari or Farsi, English, Pashto, and Urdu), his familiarity with Afghan culture, and his experience working under hardship conditions. (Tr. 34, 63-64.)

Sometime before May 2012, Applicant applied for a security clearance.<sup>9</sup> During a May 10, 2012 interview with an authorized investigator for the Office of Personnel Management, Applicant explained that he came to the United States as a refugee in 2004 and became a U.S. permanent resident one year later. Applicant admitted that his sister F and an uncle (not identified by name) lived in Afghanistan. Applicant indicated that he had "no real contact" with this uncle, from whom he had borrowed \$1,000 to pay for his mother's funeral. He disclosed that the younger of his two sisters (sister N) was married and living in Pakistan with her spouse, who worked with embroidery. Applicant denied that his family members could be used as a threat against him because sister F planned to immigrate to Australia, where her spouse was employed in construction, and his contact with sister N was limited to only two or three times a year. Applicant also denied that any of his relatives had a current or former connection to a foreign government or that there had been any unusual interest in his activities when he was in Afghanistan in July 2011. Applicant expressed sole allegiance to the United States and indicated that he could not be influenced to act contrary to U.S. interests. (GE 3.) In June 2012, Applicant began working as a linguist for the defense contractor, knowing that he could be assigned to remote and dangerous locations. (Tr. 105.)

On June 12, 2012, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) for a DOD security clearance to work as a linguist in

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<sup>8</sup>Sister F in Afghanistan and sister N in Pakistan are both uneducated. Applicant testified that under Afghan tradition and culture, his sisters are no longer considered part of his family. The moment a female is married, she is considered a member of her husband's family. (Tr. 82.)

<sup>9</sup>On May 10, 2012, Applicant was interviewed "to expand on and update his EPSQ." That security clearance application was not presented in evidence. He testified that he was hired by the defense contractor in June 2012. (Tr. 65.)

Afghanistan. On his e-QIP, which he recertified on June 26, 2012, Applicant responded affirmatively to whether he had close and continuing contact within the last seven years with a foreign national to whom he or his spouse was bound by affection, influence, common interests, or obligation. He indicated he had weekly contact with his brother in the Netherlands by electronic media, monthly telephone contact with sister F in Afghanistan, and quarterly telephone contact with sister N in Pakistan. Applicant also listed his foreign travel since October 2005, including his business trip to Afghanistan in June and July 2011. Concerning any financial support for a foreign national, Applicant responded that in the past eight years, he had given sister F \$300 five times and sister N \$300 six times. (GE 1.)

On or before June 26, 2012, the e-QIP was annotated to reflect that Applicant had also sent a cousin B \$1,000 in 2011. (GE 2.) The funds were for Applicant's spouse to cover her costs while in Afghanistan for her mother's funeral. (Tr. 108.) Applicant also reported at that time previously undisclosed foreign contacts with his brother's wife by Gmail chat every two months; with his uncles H and M in Afghanistan every four months by telephone; with his cousin J by Gmail chat every three months; and with his cousin B once every one or two years. (GE 1.) Two or three days before he updated his e-QIP, one of his cousins had sent him a greeting on Facebook. Applicant did not respond. (Tr. 85, 122-123.)

In the context of a counterintelligence-focused security screening of June 26, 2012, Applicant denied allegiance to any foreign country in preference to the United States. Asked to describe his feelings for his country of birth, Applicant responded:

I think it is a mixed feeling. It has been mixed since I have been mature; on the one hand I felt sympathy and on the other felt angry the way [Afghanistan] was administered. Sometimes that feeling becomes angry and frustrating with the government [Afghanistan]. I believe that Afghanistan has lost its best opportunity since its inception because of help and aid from the United States [that has been misused]. I do not attach my life with Afghanistan and anything that happens here [U.S.] is happening to ME.

Concerning whether he had served in any military, paramilitary, intelligence, security, police organization, or foreign political party, Applicant revealed that he had been taken captive and beaten for four days by the mujaheddin in Afghanistan around 1991 in an extortion attempt directed at his uncle H, who ran a NGO that distributed medicines. He reported that since 2004, his uncle M has been an officer in the employ of an Afghan commission, and his cousin J worked as an information technology technician for a ministry of the Afghan government. Applicant denied that he had any concerns about working for the United States in Afghanistan or for the safety of family members. In response to whether he had assisted non-U.S. persons, organizations, functions or governments, Applicant reported the \$1,500 sent to sister F and \$1,800 to sister N since 2004, and the \$1,000 for his spouse when she was in Afghanistan in 2011 through his cousin B. Applicant denied any ownership of foreign property apart from the rights to



some property that his mother had owned.<sup>10</sup> He did not intend to assert any claim on the land. (GE 2.)

Applicant has ongoing ties to several foreign nationals. Applicant's brother in the Netherlands acquired Dutch citizenship, although his spouse, a student, is still an Afghan citizen with permanent residency in the Netherlands. A photographer by avocation, Applicant's brother is currently a stay-at-home dad caring for their child, who was born in the Netherlands. As of March 2013, Applicant's brother and sister-in-law were expecting their second child. (Tr. 96-97.) Applicant had weekly contact with his brother before Applicant's deployment to Afghanistan in July 2012. As of March 2013, they were communicating by Skype once every two to three weeks. (Tr. 97.) Applicant's brother is aware that Applicant works as a linguist for the U.S. government. (Tr. 104.)

Applicant's sister F still lives in Afghanistan awaiting approval to immigrate to Australia. (Tr. 80-81, 97-98.) The Taliban are active in her province, but not in her area, which is occupied by traditionally marginalized people that were oppressed by the Taliban. (Tr. 101-103.) Applicant had contact with sister F approximately six times a year before his deployment. After his sister F telephoned his home in the United States to inquire how Applicant and his family had weathered a hurricane in September 2012, Applicant called his sister from Afghanistan to inform her that he was well. He told her at that time that he was in Afghanistan working for the United States out of a U.S. military base, but he did not discuss the nature of his work or inform her of his precise location. (Tr. 78-79, 104.)

Applicant contacts his sister N around five or six times a year.<sup>11</sup> (GE 2; AE H.) Sister N lives in a city in Pakistan (GE 1.), which is known to the U.S. government to provide safe haven to terrorists. No evidence was presented about sister N's and her spouse's occupations and activities other than she is a homemaker and he works with embroidery.

Applicant's uncle H in Afghanistan is in private business while his uncle M is a "low profile-second tier employee" for an Afghan commission in its procurement office.<sup>12</sup> (GE 2; AE H; Tr. 36.) Applicant had quarterly contact with his uncles, who both live in

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<sup>10</sup>Applicant's mother inherited the property from her parents, but according to Applicant, on her marriage, her uncle's family inherited the property. Applicant has never seen the property and has no intent to confront his mother's relatives over the property. (Tr. 114.)

<sup>11</sup>Applicant indicated on June 26, 2012, that he had contact with his sisters once every two months. (GE 2.) At his hearing, he indicated that before his deployment, he spoke with sister F three to four times in a year, usually on happy occasions (e.g., Eid, New Year's), and that he had the same type of contact with his uncles in Afghanistan. (Tr. 81.) He testified to even less frequent contact with sister N in Pakistan because he does not have a good relationship with sister N's husband. (Tr. 83.)

<sup>12</sup>Applicant knew that his uncle worked for the Afghan government as of June 26, 2012, if not before then. (GE 2.) However, he apparently was unaware of his uncle's duties as a procurement officer before he inquired on receipt of the SOR. Applicant's uncle is responsible for purchasing, outside staffing, and compiling reports. (Tr. 36-37.)

Kabul, before his deployment. (GE 2; Tr. 36, 84.) He “might have been in touch” with one of his uncles once since he arrived in Afghanistan, although he does not recall for certain. (Tr. 80.) Applicant denies a close bond with his cousins B and J in Afghanistan, who are both in their 20s. Cousin J works as a contract information technology technician for the Afghan government in Kabul. His contract is funded by a U.N. program. (AE H; Tr. 37-38, 85, 115-116.) Cousin B is an engineer for a private construction company in Afghanistan. (GE 2.)

Applicant is not in ongoing contact with any of the persons with whom he established the minority human rights NGO between 1999 and 2002. The organization has not been active in the past few years. Two of the original 11 founding members are in Afghanistan. One works with a Norwegian NGO as a refugee officer while the other works for the U.N. in Afghanistan. Applicant contacted them for information about possible research subjects when he was in Afghanistan in 2011 for the human rights NGO. The other founding members have left that area of the world. (Tr. 127-128.)

Applicant’s spouse has five siblings (a sister and four brothers), who are resident citizens of Afghanistan. They live in the same district as Applicant’s sister F. Applicant’s spouse has another sister who lives in Norway. (Tr. 99.) The respective occupations of Applicant’s brothers-in-law in Afghanistan are farmer, cook or night watchman, university student, and welder. (Tr. 100.) Applicant believes his spouse has telephone contact with her siblings about four or five times a year and no other contact. (Tr. 101.)

Applicant’s spouse has been to Afghanistan only once since she came to the United States in March 2004: in 2011 for her mother’s funeral. She saw her siblings at that time. (Tr. 101.) Applicant’s children born abroad have not been to Afghanistan since they left in 2004. His youngest child has never been to Afghanistan. Applicant speaks to his children in English. (Tr. 34-35.)

Applicant and his spouse rent their condominium in the United States. His current salary with the defense contractor is \$117,000. (Tr. 114.) His spouse is a retail sales associate. (Tr. 115.) Their children attend their local public schools. Applicant’s eldest child has been taking advanced mathematics classes since he was in fifth grade. When he was in middle school, he was chosen as a student ambassador. He also joined the soccer team. The elder of Applicant’s two daughters is in middle school, where she helps during orientation days for the parents of incoming students. Applicant’s spouse is involved in their condominium activities. (Tr. 58-59.)

For several months starting July 20, 2012, Applicant provided linguist and cultural advisor duties for two security forces assistance teams (SFATs) operating out of a forward operating base (FOB) in Afghanistan. He also performed voluntary duty for the radio station on his own time. (AEs A-D; Tr. 65-74.) As the primary and most senior interpreter for both SFATs, Applicant translated operational and training documents; interpreted discourses, meetings, and tactical communications between the SFAT and Afghan National Security Force; and provided valuable cultural guidance. U.S. military officers familiar with Applicant’s contributions at the FOB uniformly attest to his

professionalism, trustworthiness, and unmatched linguist skills (“the best Dari/English linguist in theater”), and they recommend Applicant most highly for a security clearance. (AEs A-D, I.) The battalion commander for a combined joint task force considers Applicant to be the best linguist he has worked with in the past ten years (“No one else comes even close to his technical skills and motivation to contribute.”). (AE D.) A civilian member of a human terrain team at the FOB “cannot recommend a better interpreter or one that [he trusts] more.” Applicant was vigilant and alert at all times and unusually perceptive. His insights were instrumental in the team member’s ability to decipher social situations, understand political organizations, and identify corruption. This team member has not witnessed or heard about Applicant having any contact with his family members when in Afghanistan. He believes Applicant is unwavering in his commitment and loyalty to the United States. (AE E.)

Applicant demonstrated similar trustworthiness, integrity, and good judgment in his work with the human rights NGO and the nonprofit human rights documentation center. An executive director of one of the NGO’s divisions holds Applicant’s character in “highest esteem.” She met him in late 2002 when they traveled together for research in Afghanistan, and she “entrusted [her] life to him in the field.” She confirms that Applicant remained calm during an incident in 2003 where she and a colleague came under gunfire in Afghanistan. He was able to negotiate her and her colleague’s safety the next day. (AE F; Tr. 40-43.) That colleague had the opportunity to work closely with Applicant in difficult situations in Afghanistan in 2002 and 2003. He considers Applicant to be “brave, intelligent, dynamic, dedicated, and mature.” (AE M.)

Applicant’s supervisor at the nonprofit human rights documentation center in the United States has moved on to a research position for the human rights NGO. In his experience, Applicant proved to be of the highest moral character. Applicant produced high quality work and showed the same dedication to his family at home. He believes that Applicant views his job with the defense contractor as a valuable opportunity to serve his country and to bring peace and stability to Afghanistan. (AE K.)

Applicant’s application for security clearance is also endorsed by a policy officer with the United Nations. This U.N. employee became acquainted with Applicant in June 2002 when both worked for the human rights NGO, he as a researcher and Applicant as a translator. They worked closely together conducting field research in the still unstable provinces of southern Afghanistan. Applicant immediately impressed him with his “maturity, discretion, and composure in the face of challenging situations and in handling sensitive information.” They then consulted informally until 2004, when the risks related to Applicant’s documentation of human rights abuses in Afghanistan forced Applicant to flee the country. Applicant and this U.N. official have maintained a personal relationship since then. Applicant has expressed his commitment to the values and principles of the United States and his appreciation of the freedoms and opportunities offered him and his family in the United States. (AE L.)

A senior fellow at a project on law and security at law school X, who met Applicant around 2002 when in Afghanistan for research and policy work, observed

Applicant's ability to respond calmly and logically in difficult situations. During the exceptionally difficult period following threats against him and his family by Afghan warlords, Applicant did not falter in his commitment to his family, to his work "for the betterment of Afghanistan, and his determination to reach the U.S." This senior fellow next had contact with Applicant between 2007 and 2010, when Applicant worked for the small nonprofit human rights documentation center and was scheduling lectures for the organization's legal interns. Recognizing the discretion and good judgment required of persons working in conflict situations, this senior fellow would "wholeheartedly" trust Applicant with sensitive decisions. (AE J.)

Applicant also has the highest recommendation of the executive director of the scholars-at-risk network. Through this director's work promoting academic freedom and defending persecuted intellectuals, he "came to know and admire" Applicant for his work as a human rights researcher and consultant. He is aware of the serious threats against Applicant's life in 2003, and of the challenges Applicant faced while in hiding and then as a refugee with a young family. Applicant has demonstrated to him his commitment to human rights and scholarship on transnational justice issues. (AE G.)

Applicant has expressed his commitment to the mission of defeating terrorism, of helping the current Afghan government resist the pressure of the Taliban, and of developing a government based on the rule of law, democracy, and human rights. (Tr. 34, 63-64.) After his deployment ends, Applicant intends to return to the United States and work with the U.S. State Department, another government agency, or a NGO. Applicant does not intend to reestablish a life in Afghanistan. (Tr. 86-88.) Applicant has voted in one U.S. election since becoming a U.S. citizen. (Tr. 117.)

### **Administrative Notice**

After reviewing U.S. government publications, I take administrative notice of the following facts pertinent to Afghanistan and Pakistan and their respective foreign relations:

#### **Afghanistan**

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 led to the withdrawal of Soviet forces in early 1989.

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

After the September 11, 2001, terrorist attacks, the Taliban rejected U.S. demands that Afghanistan expel Bin-Laden and his followers. U.S. forces and a coalition partnership commenced military operations in Afghanistan in October 2001 that forced the Taliban out of power by November 2001 and the installation of an interim government. President Hamid Karzai assumed the presidency in an October 2004 democratic election. He was declared president for a second term in November 2009 after an election tarnished by allegations of fraud. Widespread irregularities tarnished September 2010 parliamentary elections, leading to President Karzai's appointment of a special tribunal to adjudicate the disputed election results.

Afghanistan has made significant progress since the Taliban was deposed, and the al-Qa'ida core was significantly degraded by the death of bin Laden and other key terrorist operatives in the last ten years. As of September 30, 2012, around 76% of Afghans were living in areas where the Afghan National Security Force (ANSF) had begun to assume the lead for security. Enemy-initiated attacks (EIAs) were down three percent from January 2012 to September 2012 compared to the same period in 2011, and EIAs occurred disproportionately outside populated areas. While Afghanistan and especially Kabul are significantly safer today than one year ago, there was a rise in insider attacks in the country in 2012.<sup>13</sup> In addition to the ongoing threats from adaptive and determined terrorists and insurgents, the country must rebuild a shattered physical, economic and political infrastructure. The government still faces challenges in developing coordination between the Afghan National Army and the Afghan Uniform Police, an effective and accessible legal system, and subnational institutions to work in partnership with traditional and local leaders to meet the needs of the population. Revenue, budgeting, spending, and service delivery authority resides with the central ministries in Kabul, limiting the efficiency of service delivery at the provincial and district levels. A lack of sufficient progress in governance and sustainable economic development continues to slow the reinforcement of security gains in Afghanistan.

Human rights abuses persisted in 2011. Armed insurgents committed widespread violence, including killings of persons affiliated with the government and indiscriminate attacks on civilians. The Taliban increasingly used children as suicide bombers. Antigovernment elements threatened, robbed, and attacked villagers, foreigners, civil servants, and medical and nongovernmental organization (NGO) workers. The Afghan National Police and other local security forces were implicated in the torture and abuse of detainees and in extrajudicial killings. Other human rights

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<sup>13</sup>Insider attacks are incidents in which ANSF members knowingly attack or help facilitate an attack against Coalition forces with the intent to maim or kill Coalition personnel; incidents in which insurgents portray themselves as ANSF members with the intent to target Coalition force personnel; and incidents in which previously friendly third-country nationals and local nationals seek to attack Coalition force personnel. In an effort to mitigate the risk of insider threats, the ANSF recruit vetting process is under review. See the DOD's *Report on Progress Toward Security and Stability in Afghanistan*, dated December 2012.

problems included pervasive corruption, which limits the effectiveness and legitimacy of the Afghan government; insufficient transparency in the judiciary; poor enforcement of human rights protections guaranteed by Afghanistan's constitution; endemic violence and societal discrimination against women and girls; child abuse, including pervasive sexual abuse and child labor; violation of privacy rights; and restrictions on freedoms of speech, the press, and religion.

As of January 28, 2013, NATO and International Security Assistance (ISAF) forces were working in partnership with Afghan security forces to combat violent extremists and their strategy of terrorist attacks relying largely on assassinations, suicide bombings, and improvised explosive devices (IEDs). While the goal of the U.S. mission is to transition primary security to the ANSF by the end of 2014, the United States and ISAF partner nations are committed long term to assist Afghanistan in its efforts to rebuild its institutions and realize its vision for a country that is stable, democratic, economically successful, and committed to the protection of human rights, women's rights, and religious tolerance. On May 2, 2012, the United States and Afghanistan signed a 10-year strategic partnership agreement demonstrating the United States' enduring commitment to strengthen Afghanistan's sovereignty, stability, and prosperity, and continue cooperation to defeat al-Qa'ida and its affiliates. The United States designated Afghanistan as a major non-NATO ally, and an Afghan-U.S. bilateral commission was established and convened on October 3, 2012, to ensure effective implementation of the strategic partnership agreement.

The Afghan government has continued its efforts to eliminate terrorist safe havens and build security, particularly in the country's south and east, where insurgents threaten stability. As al-Qa'ida has been degraded by the disruption of their operational planning and loss of several senior leaders, it has become reliant on a shrinking cadre of experienced leaders, primarily within a Haqqani-facilitated safe haven in North Waziristan, Pakistan. Semi-autonomous insurgent groups, including the Haqqani Network, are united under the senior Afghan Taliban shura in Quetta, Pakistan. From their safe havens in Pakistan, these Taliban-led insurgents stage attacks against U.S., Afghan, and ISAF forces in Afghanistan. Insurgent groups within Afghanistan are located primarily in the Pashtun-majority inhabited areas, and most insurgent commanders and fighters operate within or near their home districts. Haqqani insurgents carried out a complex attack against multiple targets in Kabul on September 13, 2011, and again on April 15, 2012, which included the U.S. Embassy, the ISAF headquarters, and the Afghan parliament. On September 7, 2012, the United States formally declared the Haqqani Network a Foreign Terrorist Organization. Eastern Afghanistan accounted for almost one third of all insurgent attacks throughout the country during the spring and summer of 2012, although in a district of Ghazni province in eastern Afghanistan, local civilians upset over the Taliban's oppression and closure of schools began to resist the insurgency forcefully. Due to increased security and developmental support from the ANSF and Afghan government, the insurgents were expelled and resistance channeled toward peaceful development.

As of January 28, 2013, the U.S. State Department was continuing to warn U.S. citizens against traveling to Afghanistan in light of its volatile security situation. No region in Afghanistan is considered immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other Western nationals at any time. Remnants of the former Taliban regime and the Al-Qa'ida terrorist network, as well as other groups hostile to ISAF military operations, remain active. Afghan authorities have a limited ability to maintain order and ensure the security of Afghan citizens and foreign visitors. Kabul and its suburbs are considered at high risk for militant attacks, including rocket attacks, vehicle-borne IEDs, direct-fire attacks, and suicide bombings. Travel in all areas of the country is unsafe due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of insurgent attacks, including vehicle-borne or other IEDs. There is an ongoing and significant risk of kidnapping and assassination of U.S. citizens and NGO employees throughout the country.

U.S. citizens who are also Afghan nationals do not require visas for entry into Afghanistan. For U.S. passport holders born in Afghanistan (listed as place of birth on the passport), a visa is not required for entry. The Afghan embassy issues a letter confirming the nationality of an Afghan citizen for entry into that country. Immigration authorities in Afghanistan have implemented a fingerprinting system for all foreign visitors upon entry to the country with the exception of diplomats and ISAF personnel traveling on official orders.

## **Pakistan**

Pakistan is a parliamentary federal republic in South Asia, with a population of more than 170 million. Democratic rule was restored in 2008 after years of military government. Pakistan is central to U.S. interests in South Asia, as evidenced by Pakistan's status as a nuclear power, its shared border with India and Afghanistan, and its potential role in promoting stability in Afghanistan. The United States continues to seek a constructive relationship with Pakistan. Pakistan has publicly declared its support for an Afghan-led reconciliation process, and the country continues to cooperate on some counterterrorism activities, bolstering U.S. efforts to disrupt and defeat Al-Qa'ida. At the same time, extensive terrorist networks operate within Pakistan's Federally Administered Tribal Areas (FATA), the Khyber Pakhtunkhwa, and the Balochistan Province, which borders Iran and Afghanistan. The FATA provide safe haven to Taliban, Al-Qa'ida, and other foreign and Pakistan-based extremist groups, such as Quetta Sura, Lashkar-e-Tayiba, and the Haqqani Network, which operates as a strategic arm of Pakistan's Inter-Services Intelligence Agency. Al-Qa'ida leadership in Pakistan maintains its support to militants conducting attacks in Afghanistan, and provides funding, training, and personnel to facilitate terrorist and insurgent operations in Afghanistan. Al-Qa'ida leader Osama bin Laden, a sworn enemy of the United States and responsible for killing thousands of innocent civilians in high-profile attacks (e.g., September 11, 2001, the 1998 East Africa embassy bombing, and the USS Cole), was in hiding within a large al-Qa'ida compound in Pakistan at the time of his death by U.S. Special Forces on May 1, 2011.

U.S. relations with Pakistan were further strained following a cross-border incident in November 2011 that resulted in the death of 24 Pakistani soldiers. Pakistan closed the ISAF Ground Lines of Communication (GLOCs) into Afghanistan. On July 4, 2012, Pakistan reopened the GLOCs under a memorandum of understanding establishing the principles and procedures for governing the transit of cargo through Afghanistan, which led to some improvement in U.S.-Pakistan relations. Cross-border fires from Pakistan and Afghanistan remain a source of tension between Pakistan and Afghanistan, although from mid-August to late September 2012, ISAF, the ANSF, and Pakistan's military conducted complementary operations in border areas of Afghanistan and Pakistan. Pakistan's continued acceptance of sanctuaries for Afghan-focused insurgents and the country's failure to interdict IED materials and components continue to undermine the security of Afghanistan and pose a threat to U.S., Coalition, and Afghan forces.

The Pakistani government has a poor human rights record. Reported violations include extrajudicial killings, torture and disappearances by security forces, lack of judicial independence, arbitrary arrest, honor crimes, wide-spread corruption, disappearance and imprisonment of political opponents, and trafficking in persons. The May 2012 *Human Rights Report* by the U.S. State Department notes reports that Pakistani domestic intelligence services monitored political activists, politicians, suspected terrorists, and the media. Credible reports indicate that authorities routinely used wiretaps, intercepted and opened mail without requisite court approval, and monitored mobile phones and electronic correspondence.

The U.S. State Department continues to warn U.S. citizens to defer all non-essential travel to Pakistan. The presence of al-Qa'ida, Taliban elements, and indigenous militant extremist groups poses a potential danger to U.S. citizens throughout Pakistan. Targeted killings and attacks against government officials, humanitarian and NGO employees, tribal elders, and law enforcement personnel, continue throughout the country. Suicide bombings have occurred at public places, such as rallies, places of worship, rail stations, and major market places where U.S. citizens and Westerners are known to congregate or visit. On September 3, 2012, unidentified terrorists attacked a U.S. government vehicle in Peshawar, injuring U.S. and Pakistani personnel. Quetta, the provincial capital of Balochistan, has experienced an increase in bombings and occasional gun battles in the streets. The U.S. Consulate General in Karachi has been the target of several major terrorist attacks or plots in recent years. U.S. citizens and other Westerners continue to be potential targets of hostility and anti-Western mob violence. U.S. citizens have been kidnapped for ransom or personal reasons.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a



security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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 overall 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 that the applicant may deliberately or inadvertently fail to 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B—Foreign Influence**

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

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.

Applicant is a committed human rights advocate, whose work to document abuses in Afghanistan led local warlords to threaten him and his family in 2003. After Applicant's mother was killed in an incident in Pakistan in November 2003 where he may have been the intended target, Applicant, his spouse, and their three children came to the United States as refugees in March 2004. Over the ensuing years, they established considerable ties to the United States, most notably citizenship. Yet, they also maintained relationships of varying closeness with foreign family members, including several relatives in South Asia. Applicant's sister F, uncles H and M, and cousins B and J are resident citizens of Afghanistan, while his sister N is a resident citizen of Pakistan. Two disqualifying conditions under AG ¶ 7 are potentially applicable:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The salient issue under AG ¶¶ 7(a) and 7(b) is whether there is substantial evidence of a "heightened risk" of foreign influence or exploitation because of the respective foreign tie, contact, or interest. The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. Even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "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). 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Guideline B cases are not about an applicant's loyalty. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." Applicant has sufficiently close bonds of affection and obligation with his sisters to call them about once every other month and inquire about their well-being. Sister F called Applicant from Afghanistan around September 2012 to ask how he and his family fared during a recent hurricane, and Applicant returned her call from his location in Afghanistan. Over the last eight years, Applicant has also sent sister F \$1,500 and sister N \$1,800 in \$300 increments. Applicant indicated that the funds sent to sister F were to cover the costs of an annual celebration in memory of their mother. It is unclear whether the funds sent to sister N were for the same purpose. Applicant visited with sister F when he was in Afghanistan for the human rights NGO in July 2011. As for his uncles in Afghanistan, Applicant has telephone contact with them on happy occasions about four times a year. Whether out of a sense of familial obligation or personal regard or both, Applicant visited with his uncles when he was in Afghanistan in July 2011 to express his condolences on the death of another family member. Because Applicant is some 20 years older than his cousins in Afghan, he does not have a particularly close relationship with them. Even so, Applicant chats by Gmail with cousin J once every three months, and when Applicant's spouse was in Afghanistan for her mother's funeral in 2011, Applicant sent her \$1,000 through cousin B. The risk is also heightened because of the connections his uncle M and cousin J have to the Afghan government. Cousin J is a contract employee, but his services directly benefit the Afghan government. AG ¶¶ 7(a) and 7(b) are established because of these foreign contacts and connections.

Furthermore, the risk of foreign influence is heightened because of the ongoing terrorist activities in Afghanistan and Pakistan. The Afghan-Taliban dominated insurgency continues its violent efforts to destabilize the Afghan civilian government and its security forces. In addition to the Taliban, al-Qa'ida, other insurgent groups, and anti-Coalition organizations continue to operate in Afghanistan, or from safe havens in Pakistan, resulting in numerous attacks and deaths. 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. Those members of Applicant's family who live in Afghanistan are at risk of terrorism on a daily basis. The evidence does not establish that any of Applicant's family members have an obligation to the Afghan or Pakistani military or intelligence ministry. Applicant's uncle M works as a low-level procurement officer responsible for purchasing, outside staffing, and compiling reports. (Tr. 36.) Even so,

uncle M's employment with an Afghan commission and cousin J's contract IT position with a ministry of the Afghan government could enhance their visibility. Applicant and his family in Afghanistan must also be considered as potential targets of terrorists and the Taliban because of Applicant's duties as a linguist in support of the U.S. military. Should Applicant be granted a security clearance, his access to classified information could theoretically increase the risk of undue foreign influence. International terrorist groups have been known to conduct intelligence activities as effectively as capable state intelligence services.

Applicant's spouse has ties of her own to Afghanistan. Five of her six siblings are resident citizens, and she has telephone contact with them five or six times a year. The DOHA Appeal Board has held that "as a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). Applicant's spouse's foreign contacts and connections could raise independent security concerns under 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," but the Government did not allege her family relationships under Guideline B.

Applicant's work documenting human rights abuses in Afghanistan was alleged only in the context of the threats he faced around 2003, before he and his family immigrated to the United States. Applicant did not have any contact with the warlord that threatened his family because he was outside Afghanistan at the time. Neither AG ¶ 7(a) nor AG ¶ 7(b) are implicated. The warlord is apparently no longer in a position to threaten Applicant or his family members, so Applicant is unlikely to have any contact with him.

Applicant admitted at his hearing that he contacted a couple of human rights workers when he was in Afghanistan in 2011. Yet, there is no evidence that his human rights research in Afghanistan in June and July 2011 raised any undue attention within Afghanistan or Pakistan. The Government did not allege that it heightened the risk of undue foreign influence.

Concerning potential factors in mitigation, 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.," is difficult to satisfy, given the ongoing risk of terrorist activity in Afghanistan and Pakistan. Applicant's uncles live in Kabul, which is now reportedly the most secure city in Afghanistan, and Applicant's sister F lives in a locale not known as a Taliban stronghold. However, neither location can be considered immune from terrorist activity. Applicant's sister N lives in a city in Pakistan that provides safe haven for terrorists.

Applicant's contact with his cousins may reasonably be characterized as casual. His correspondence with cousin B is limited to once or twice a year, and while he chats by Gmail with cousin J once every three months, Applicant did not respond to a recent Facebook greeting. However, it is difficult to fully satisfy AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," because of Applicant's in-person contacts with his sister F and uncles in Afghanistan in July 2011, and his telephone contact with sister F in September 2012 during his deployment in Afghanistan.

A heightened risk of undue foreign influence may 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 credibly asserts his allegiance is to the United States. The family members to whom Applicant is most closely bound by affection or obligation or both, his spouse and children, are resident citizens of the United States. At the same time, it cannot reasonably be said that his sense of loyalty to foreign family members is so minimal to qualify for mitigation under the first prong of AG ¶ 8(b) or that his relationships and loyalties to the United States are "longstanding." Applicant has resided in the United States only for the past nine years, and he has been a citizen only since December 2010.

Applicant's commitment to democratic principles has been longstanding. After he graduated from college in Afghanistan, he moved to Pakistan, where he co-founded an organization for the human rights and education of minorities, primarily refugees from Afghanistan. On his return to Afghanistan in early 2002, he began working initially as a translator and "fixer," and then as a researcher, for a U.S.-based human rights NGO. He and his human rights colleagues faced dangerous situations in Afghanistan when investigating and documenting abuses, and Applicant demonstrated a willingness to put his work and the safety of his colleagues above his personal safety.

Only after his human rights work became a threat to his family's safety, Applicant applied for refugee status with the UNHCR. Given a choice to take his family to Canada or Sweden, Applicant instead accepted the risk of delaying resettlement so that they could immigrate to the United States. With funding from a scholar-at-risk program, Applicant had a human rights fellowship initially at university X and then at another prestigious private university in the United States. When the funding ended, he pursued his LL.M degree at his own expense at private university X. Applicant could probably have pursued a more lucrative career in the United States with his LL.M degree, but he chose to work for a small, nonprofit human rights documentation center. On moving to their present locale in 2007 for his job, Applicant and his spouse became involved in their children's school activities. In December 2010, Applicant, his spouse, and children became U.S. citizens. Applicant and his spouse returned to Afghanistan separately in 2011, but with no intent to remain. He went in June 2011 to conduct research for the

U.S.-based human rights NGO. Applicant's spouse went to Afghanistan for her mother's funeral.

Applicant's service as a linguist in support of the United States military since July 2012 strongly suggests that he can be expected to resolve any conflict of interest in favor of the United States. This service to the United States has come at some personal cost. Aside from the risk to his own life by choosing to serve in a hostile environment, Applicant has been separated from his spouse and four children.

U.S. military officers and a civilian member of a human terrain team all benefitted from Applicant's "unmatched" performance as lead linguist and cultural advisor at an FOB in Afghanistan. They have no doubts about Applicant's judgment, reliability, or trustworthiness. Applicant showed complete focus and commitment to their mission and U.S. interests such that they trust him "absolutely." A battalion commander, for whom Applicant worked directly from July 2012 to at least January 15, 2013, as "acting cultural and political advisor, editor, and liaison to the local civil society activities promoting accountability and good governance," considers Applicant "the best that [he] has worked with in the past 10 years." Applicant has demonstrated to him "the knowledge, experience, candor, work ethic and loyalty necessary to be a tremendous asset to the programmatic needs of our mission in Afghanistan." (AE D.) Another officer believes Applicant's services to the United States "deserve accolade and recognition." (AE C.) The human terrain team member was on his second tour in Afghanistan when he worked with Applicant. He found Applicant to be an adept linguist of "unusually perceptive" insight. Applicant showed a level of commitment to the U.S. military mission "rare among deployed linguists, soldiers, and civilians." This civilian never witnessed nor heard of any contact between Applicant and his family members in Afghanistan. (AE E.)

Applicant apparently did not inform this civilian that he had called his sister from Afghanistan in September 2012. Although Applicant did not discuss his duties with his sister, he told his sister that he was working with the United States on a base in Afghanistan. Sister F's immigration to Australia would place Applicant in a better position as to the Guideline B concerns, but as the record stands, I cannot fully apply AG ¶ 8(b).

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>14</sup> Applicant has family ties to Afghanistan and to Pakistan that heighten the

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<sup>14</sup>The factors under AG ¶ 2(a) are as follows:

- (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

risk of foreign influence. With the help of the United States and ISAF, Afghanistan has made sufficient strides for the United States to turn over primary security to the Afghans in late 2014. However, the country is under constant threat of violence from terrorist and extremist groups wanting to sabotage the country's efforts to establish a stable, functioning democracy. The terrorists and insurgent groups often plan and execute attacks from sanctuaries in Pakistan. While Pakistan, Afghanistan, and the United States cooperate in combating terrorism, there was an increase in insider threats within Afghanistan in 2012. The risk of undue foreign influence is very real, especially where Applicant has been targeted in the past because of his human rights work. If Applicant's clearance is granted, there is a theoretical increase in the risk to his family members in Afghanistan and to his sister in Pakistan. The Afghan and Pakistani governments do not fully comply with the rule of law or protect civil liberties in many instances.

While not to minimize the risk of undue foreign influence, Applicant has demonstrated through his service to the U.S. military in Afghanistan since July 2012, and his years of commitment to human rights, that he can be counted on to act ethically and with good judgment, including in dangerous situations. He swore his allegiance to the United States when he became a U.S. citizen. He intends to return to Afghanistan and serve the U.S. Armed Forces as a linguist and translator, risking his life as part of his duties on behalf of the U.S. combat forces in Afghanistan. Moreover, because of his cultural insight and knowledge gained in part through his years of human rights work in South Asia, Applicant is likely to recognize any attempts by a foreign power, terrorist group, or insurgent group to exploit him or his family members. He is likely to resist and report any undue foreign influence that could jeopardize his commitment to the United States and the life that he has built here with his spouse and children. Military personnel and human rights officials have placed their complete trust in Applicant, and Applicant showed himself worthy of their trust. Applicant has earned the respect of those U.S. military personnel and human rights advocates familiar with his service on behalf of advancing the rule of law and the cause of democracy. After considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant Applicant a security clearance.

### **Formal Findings**

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

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pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge