



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



In the matter of: )  
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----- ) ISCR Case No. 12-12310  
 )  
Applicant for Security Clearance )

**Appearances**

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

07/25/2013

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant has limited contacts with his relatives living in Afghanistan and Pakistan. Applicant has honorably served as a linguist with special operations troops under dangerous conditions in Afghanistan, showing bravery, loyalty, and fidelity to the United States. He has one sibling serving with U.S. forces in Afghanistan as a linguist, and another serving as a linguist for a U.S. government contractor in the United States. He has substantial connections to the United States. Foreign influence security concerns are mitigated, and eligibility for access to classified information is granted.

**Statement of the Case**

On February 13 and 28, 2012, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On March 19, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, alleging security concerns under Guideline B (foreign influence) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or

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

On May 22, 2013, Applicant responded to the SOR. (HE 3) Department Counsel requested a hearing before an administrative judge. (Tr. 16) On June 19, 2013, Department Counsel was prepared to proceed. On June 21, 2013, the case was assigned to me. On June 21, 2013, DOHA sent notice of the hearing setting the hearing for July 10, 2013. (HE 3) The hearing was held as scheduled using video teleconference. I received the transcript of the hearing on July 18, 2013.

### **Procedural Rulings**

At the hearing, Department Counsel offered four exhibits, and Applicant did not offer any exhibits. (Tr. 21-23; GE 1-4) Applicant did not object to my consideration of any exhibits, and I admitted GE 1-4. (Tr. 22-24)

Department Counsel requested administrative notice (AN) of facts concerning Afghanistan and Pakistan. (Tr. 15; HE 4, 5, AN Requests) Department Counsel provided supporting documents to show detail and context for those facts. (HE 4, 5, Ex. I to IX) Applicant did not object, and I granted Department Counsel's request. I have also taken administrative notice of the U.S. Department of State, *Background Note: Afghanistan*, Nov. 28, 2011, <http://www.state.gov/outofdate/bgn/afghanistan/index.htm> and U.S. Department of State, *Background Note: Pakistan*, Oct. 6, 2010, <http://www.state.gov/outofdate/bgn/pakistan/index.htm>.

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

### **Findings of Fact<sup>1</sup>**

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a to 1.e. (HE 3) He admitted that his wife, father-in-law, mother-in-law, and sister-in-law are citizens and residents of Pakistan. (SOR ¶¶ 1.a-1.d) His six nieces and one nephew are citizens and residents of Afghanistan. (SOR ¶ 1.e) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

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

Applicant is a 21-year-old linguist employed by a defense contractor. (Tr. 6) In 2007, he graduated from high school in the United States. (Tr. 6) In 2008, he became a U.S. citizen and swore his allegiance to the United States. (SF 86) In 2009, he married, and he does not have any children. (Tr. 6-7) He lives with his mother, when Applicant is in the United States.

In 1991, Applicant was born in Afghanistan. (Tr. 24) His parents and siblings were all born in Afghanistan. A 60-year-old Taliban man wanted to marry Applicant's then 18-year-old sister, and Applicant's father refused to permit the marriage. (Tr. 25) Taliban members attacked Applicant's family. They struck Applicant's brother on the head, causing a brain injury; they killed Applicant's father; they burned Applicant's father's house, and his 18-year-old sister died before the family moved to the United States; (Tr. 25-26; SF 86) Applicant and his surviving family members fled Afghanistan and went to Pakistan—at that time Applicant was four years old. (Tr. 8, 24)

In 2002, Applicant, his mother, brothers, and sister left Pakistan and came to the United States as refugees, and they are now U.S. citizens. (Tr. 25-27) Applicant was 11 years old when he immigrated to the United States. (Tr. 27)

Applicant's older brother arranged for Applicant to marry a woman in Pakistan. (Tr. 19) In early 2009, Applicant went to Pakistan with his mother and became engaged, and in late 2009, he returned to Pakistan and married his fiancé. (Tr. 19, 33, 43-44) Applicant was 18, and his fiancé was 14 when they married. (Tr. 31) She was born in May 1995. (SF 86) In late 2009, Applicant stayed in Pakistan about 20 days, and then he returned to the United States. (Tr. 20, 32) His spouse has never left her family in Pakistan, and Applicant did not return to Pakistan after his marriage in 2009. (Tr. 31-33, 44) After they married, he frequently communicated with her for several months, and then he went to Afghanistan. (Tr. 20) Applicant has been serving with U.S. Armed Forces as a linguist in Afghanistan for 16 months. (Tr. 8, 28) Over the previous 16 months, he only spoke to his spouse in Pakistan twice. (Tr. 20, 32) Applicant did not tell his spouse what he does for a living for reasons of security. (Tr. 21, 28) He did not tell her he was in Afghanistan and instead Applicant told her that he was working in Hawaii. (Tr. 28) Applicant has filed an application with the Immigration and Naturalization Service for her to move to the United States at the end of 2013. (Tr. 37-38) Applicant's spouse and her family are not connected with the Pakistani government or military. (Tr. 42) He sends money to his spouse every month. (Tr. 42) Applicant does not have any land or property in Afghanistan or Pakistan. (Tr. 43)

In 2010, Applicant's older brother, who was living in Afghanistan with his spouse and seven children, was murdered by the Taliban. (Tr. 35-36) Applicant said the Taliban murdered him because his brother had relatives in the United States; he refused to pay the Taliban; and he was providing medical care to the Afghan people. (Tr. 34, 45) Applicant talks to his sister-in-law three or four times a year. (Tr. 35) His conversations with his sister-in-law are brief and are mostly about how everyone is doing. (Tr. 36) Applicant and his family members living in the United States send her money, as she does not work outside her home in Afghanistan. (Tr. 36) Applicant's family in the United States intends to bring his sister-in-law and her children to the United States. (Tr. 44-45)

When Applicant worked in Afghanistan, he served in a dangerous province out in the field with special operations-type troops. (Tr. 29) His function was to go on patrols and enter villages with the troops. (Tr. 30) When a dangerous situation arose, the troops on patrol protected Applicant from getting shot. (Tr. 31) Applicant was on vacation in the United States from Afghanistan for his hearing. (Tr. 5, 8) Applicant's annual salary as a linguist is \$102,000. (Tr. 36) He hoped to continue to serve in Afghanistan for at least a year, until all the troops come back to the United States. (Tr. 53)

One of Applicant's brothers has served in Afghanistan as a linguist for 16 months, and he was in Afghanistan at the time of Applicant's hearing. (Tr. 39-41) Applicant has another brother, who is a linguist with a clearance, who is working in the United States. (Tr. 41)

## **Afghanistan**

Afghanistan is a country in Southwestern Asia. It is approximately the size of Texas (249,935 square miles). Pakistan borders it on the east and the south. Iran borders it on the west and Russia to the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. In 2009, the population was about 28 million people with about 3,000,000 Afghans living outside Afghanistan.

Afghanistan is presently an Islamic Republic with a democratically elected president. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union withdrew from Afghanistan, fighting continued among the various ethnic, clan, and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic government took power in 2004 after a popular election. Despite that election, terrorists including al-Qaeda and the Taliban continue to assert power and intimidation within the country. Safety and security are key issues because these terrorist organizations target United States and Afghan interests by suicide operations, bombings, assassinations, car-jacking, assaults, or hostage taking. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence.

The United States-Afghan relationship is summarized as follows:

After the fall of the Taliban, the U.S. supported the emergence of a broad-based government, representative of all Afghans, and actively encouraged a [United Nations] role in the national reconciliation process in Afghanistan. The U.S. has made a long-term commitment to help

Afghanistan rebuild itself after years of war. The U.S. and others in the international community currently provide resources and expertise to Afghanistan in a variety of areas, including humanitarian relief and assistance, capacity-building, security needs, counter-narcotic programs, and infrastructure projects.

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

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

## **Pakistan**

Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States and an international coalition in Operation Enduring Freedom to remove the Taliban from power in Afghanistan. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan, the Khyber Pakhtunkhwa (Kpk), and in the Balochistan Province, which borders Iran and Afghanistan.

The Taliban, Lashkar e-Tayyiba (LT), the Haqqani Network, and al Qaida operate in Pakistan, and in some instances elements of the Pakistani Government may be covertly aiding these terrorist or anti-U.S. entities. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. It is likely that in November 2008 LT was responsible for the attack in Mumbai, which caused numerous casualties. The Haqqani Network attacked the U.S. Embassy in Kabul in September 2011. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Afghanistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to al Qaida and a number of foreign and Pakistan-based extremist groups. Al Qaida exploits the permissive operating environment to support the Afghan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremists groups, Al Qaida

uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies. Al Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistani civilians and security force personnel.

The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Since 2007, several American citizens present in Pakistan have been kidnapped for ransom or other personal reasons. The human rights situation in Pakistan remains poor. Extrajudicial killings, torture, and disappearances occur. Arbitrary arrests, governmental and police corruption is widespread, and the Pakistani government maintains several domestic intelligence agencies to monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicate that authorities use wiretaps and monitor mail without the requisite court approval, and also monitor phones and electronic messages. In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems. In the aftermath of Pakistan's development of nuclear weapons, the United States cut-off military aid to Pakistan for several years.

After September 11, 2001, Pakistan pledged its alliance with the United States in counterterrorism methods. Pakistan committed to elimination of terrorist camps on the Pakistan-Afghanistan border and subsequently sent thousands of troops and sustained hundreds of casualties in this effort. Overall, Pakistan has intensified counterinsurgency efforts, and demonstrated determination and persistence in combating militants. The United States is engaging in a substantial effort to bolster Pakistan's military forces and security. In 2003, President Bush announced that the United States would provide Pakistan with \$3 billion in economic and military aid over the next five years beginning in 2005.

On May 1, 2011, U.S. special operation personnel raided a large compound in Pakistan and killed Osama bin Laden, the leader of al Qaida. The raid raised concerns that the Pakistani Government had knowingly permitted terrorists, militants, and insurgents to find safe havens in Pakistan.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant

applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Foreign Influence

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

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

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

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(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; and

(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.

Applicant, his mother, and siblings were all born in Afghanistan. His mother and several of his siblings moved to Pakistan and then to the United States after several family members were murdered by the Taliban. Applicant lives with his mother. Applicant has limited contacts with his sister-in-law and her children, who are Afghan citizens living in Afghanistan. He provides some financial support to them. He has limited contact with his spouse and her family living in Pakistan; however, he provides financial support to his spouse. His financial support is an objective manifestation of his affection for his spouse in Pakistan and his sister-in-law in Afghanistan. Applicant is concerned about their welfare. His mother is concerned about Applicant’s sister-in-law’s welfare. There are widely documented safety issues for residents of Afghanistan and Pakistan because of terrorists and insurgents. Applicant has voluntarily shared in those dangers, and he is willing to do so in the future. Hundreds of other Afghan linguists support U.S. forces and have family living in Afghanistan and Pakistan. Thousands of



U.S. and coalition armed forces and civilian contractors serving in Afghanistan are targets of terrorists or the Taliban, along with Afghan civilians, who support the Afghan Government and cooperate with coalition forces. There is no evidence that Applicant's family is receiving any special protection from the Afghanistan, Pakistan, or U.S. Governments to safeguard them from terrorists or the Taliban. On the other hand, there is no evidence that they are under any more danger to them than to any other resident of Afghanistan.

The mere possession of close family ties with a family member living in Afghanistan or Pakistan, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; the government ignores the rule of law including widely accepted civil liberties; a family member is associated with or dependent upon the government; the government is engaged in counterinsurgency; terrorists cause a substantial amount of death or property damage; or the country is known to conduct intelligence collection operations against the United States. The complex relationships between Afghanistan, Pakistan, and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Afghanistan and Pakistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in Afghanistan or Pakistan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Afghanistan or Pakistan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Afghanistan and

Pakistan have an enormous problem with terrorism. Applicant's relationship with family members living in Afghanistan and Pakistan creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist family members in Afghanistan and Pakistan by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with or concern for his family living in Afghanistan and Pakistan has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has sufficient contacts with his family living in Afghanistan and Pakistan, and he provides financial support to them. His loyalty and connections to his family living in Afghanistan and Pakistan are positive character traits. However, for security clearance purposes, those same connections to his family living in Afghanistan and Pakistan negate the possibility of full mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden under AG ¶ 8(c)

of showing there is “little likelihood that [his relationships with his relatives who are Afghanistan and Pakistan citizens] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has significant connections to the United States. In 2002, Applicant, his mother, sister, and brothers left Pakistan and came to the United States as refugees, and they are now U.S. citizens. Applicant was 11 years old when he immigrated to the United States. His two brothers are linguists, one holds a security clearance, and one is currently deployed to Afghanistan. Department of Defense contractors have employed Applicant as a linguist and cultural advisor for 16 months in Afghanistan. He has served with special operations troops, and has faced danger from U.S. enemies on behalf of the U.S. Most importantly, Applicant is willing to return to Afghanistan to assist U.S. Armed Forces in a dangerous combat environment. He has offered to continue to risk his life to support the United States’ goals in Afghanistan. He has shown his patriotism, loyalty, and fidelity to the United States.

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

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

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

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

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

In sum, Applicant’s connections to family living in Afghanistan and Pakistan are significant; however, they are substantially less than his current family connections to the United States. His defense contractor employment, performance of linguist duties in a combat zone, and U.S. citizenship are more significant than his connections to his family living in Afghanistan and Pakistan. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B. Foreign influence concerns under Guideline B are mitigated; however, assuming AG ¶ 8(b) is not applicable, security concerns are separately mitigated under the whole-person concept, *infra*.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

Several of Applicant’s family connections cause foreign influence security concerns; however, they are not sufficient to merit denial of Applicant’s access to classified information. Applicant has close connections to family living in Afghanistan and Pakistan. He provides financial support to them. His family in Afghanistan and Pakistan is at a greater risk due to Applicant’s position as a linguist and, if his clearance is granted, there is a theoretical increase in the risk to his family in Afghanistan and Pakistan.

The factors weighing towards approval of Applicant's security clearance are more substantial than the factors weighing against its approval. Applicant has lived in the United States since 2002. He served in Afghanistan supporting U.S. forces for the previous 16 months. In 2008, he became a U.S. citizen and swore an oath of allegiance to the United States. His mother and two brothers are citizens and residents of the United States. His brother has been deployed to Afghanistan as a linguist for 16 months, and his other brother is a linguist and security clearance holder working in the United States.

There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations. Department of Defense contractors have employed him as a linguist and cultural advisor for 16 months in Afghanistan. He went on combat missions in Afghanistan and made contributions to the U.S. military at personal risk. Applicant is willing to continue to serve in Afghanistan in support of U.S. Armed Forces as a linguist and translator, risking his life as part of his duties on behalf of the U.S. combat forces in Afghanistan. He is fully aware of the risks to himself, and he is also aware that his family members in Afghanistan and Pakistan are at risk from terrorists and the Taliban. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant does not own property in Afghanistan. His desire for employment as a translator and oath of allegiance to the United States document his loyalty, trustworthiness, and reliability, and they weigh towards approval of his security clearance.

A Guideline B decision concerning Afghanistan and Pakistan must take into consideration the geopolitical situation and dangers there.<sup>3</sup> Afghanistan and Pakistan are dangerous places because of violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the Afghanistan and Pakistan Governments, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The Afghanistan and Pakistan Government do not fully comply with the rule of law or protect civil liberties in many instances. Applicant's linguist duties in Afghanistan will be personally dangerous. The United States, Pakistan, and Afghanistan Governments are allies in the war on terrorism. The United States is committed to the establishment of a free and independent Afghan Government. Afghanistan, Pakistan, and the United States have close relationships in diplomacy and trade.

I have carefully assessed Applicant's demeanor and sincerity at his hearing, and I find his statements to be credible. I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has carried his burden and foreign influence concerns are mitigated. Eligibility for access to classified information is granted.

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<sup>3</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

## **Formal Findings**

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.e: For Applicant

## **Conclusion**

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

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Mark Harvey  
Administrative Judge