



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



In the matter of: )  
 )  
----- ) ISCR Case No. 13-00374  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Department Counsel  
For Applicant: *Pro se*

01/03/2014  
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**Decision**  
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HARVEY, Mark, Administrative Judge:

Applicant is close to his parents and siblings, who are citizens and residents of Afghanistan. His father is a retired field grade officer in the Afghanistan Army, and is receiving a pension from the Afghan Government. Applicant emigrated from Afghanistan to the United States in 2008 and became a U.S. citizen in 2011. Notwithstanding several years of service supporting U.S. forces in Afghanistan, foreign influence security concerns are not fully mitigated, and eligibility for access to classified information is denied.

**Statement of the Case**

On September 15, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 5) On July 31, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline B (foreign influence). (Item 1) The SOR detailed reasons why DOD 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 Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On August 22, 2013, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated October 28, 2013, was provided to him on November 25, 2013.<sup>1</sup> On December 12, 2013, Applicant responded from Afghanistan to the FORM. (FORM response at notarization page) On December 12, 2013, Department Counsel elected not to object to Applicant's FORM response. The case was assigned to me on December 20, 2013.

### **Procedural Rulings**

Department Counsel offered nine exhibits for administrative notice concerning foreign influence security concerns raised by connections to Afghanistan. (FORM 10-11) Department Counsel's request is granted. I have also taken administrative notice of the U.S. Department of State, *Background Note: Afghanistan*, Nov. 28, 2011 because it contains positive information about Afghanistan's relationship with the United States, and emphasizes the U.S. diplomatic and military goals in Afghanistan.<sup>2</sup>

### **Findings of Fact<sup>3</sup>**

Applicant admitted the allegations in SOR ¶¶ 1.c, 1.d, 1.f, 1.g, 1.h, and 1.i, and he provided explanations and mitigating information. (Item 4) 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.

Applicant is 38 years old, and he was born in Afghanistan. (Item 5) From January 2001 to April 2008, he lived in Afghanistan. (Item 5 at 10) From April 2008 to November 2009 he lived in the United States. (Item 5 at 9-10) He attended school in Afghanistan from 1995 to 2002, and he was awarded a medical degree. (Item 5 at 11, Item 6) From June 2009 to present, he worked as a site manager in Afghanistan. (Item 5 at 12) From July 2008 to June 2009, he worked in a fast-food restaurant in the United States, and he

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<sup>1</sup>The DOHA transmittal letter is dated November 4, 2013, and Applicant's receipt is dated November 25, 2013. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

<sup>2</sup>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).

<sup>3</sup>The facts in this decision do not specifically describe employment, names of witnesses, names of other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

also worked briefly as a corrections officer. (Item 5 at 13-14) From January 2007 to March 2008, he worked as a linguist in Afghanistan. (Item 5 at 15-16) From January 2002 to December 2006, he worked as a local national linguist in Afghanistan. (Item 5 at 16-17) He has never served in the military. (Item 5 at 19)

In 2006, Applicant married in Afghanistan. (Item 5 at 22) In 2007, his daughter was born in Afghanistan. (Item 5 at 24) He applied for a special immigration visa (SIV) in 2007, and in April 2008, he moved to the United States. (Item 6; FORM response) In 2011, Applicant indicated his spouse and daughter were living in Afghanistan. They were living with his parents. (FORM response) In August 2011, he was naturalized as a U.S. citizen. (Item 7) His spouse and daughter are now living in the United States as U.S. permanent residents or “green card” holders. (SOR response)

Applicant’s mother and father are citizens and residents of Afghanistan. His parents had 10 children, and one son is deceased.<sup>4</sup> Applicant’s father served in the Afghan Army for approximately 25 years, retired in 1980, was a field-grade officer when he retired, and receives a small retirement from the Afghan Government. Applicant provides \$300 to \$400 monthly to his parents. He contacts his father once or twice a month and his mother two or three times a month. His father is “around 84 years old, very sick and feeble, . . . [and] has never been involved in any politics or associated with any criminal or terrorist organization.” His father knows Applicant is working as a linguist. Applicant has petitioned the U.S. Government for permission to have his parents come to the United States.

Five of Applicant’s siblings are citizens and residents of Afghanistan; one sister is a citizen of Afghanistan and a resident of Pakistan; one sister is a citizen and resident of Bulgaria. (SOR response) He contacts his five siblings, all living in Afghanistan, one to three times a month. (Item 6) One of Applicant’s brothers worked for the U.S. Army from 2008 to 2013 as a linguist, received a visa, and is moving to the United States in December 2013. (FORM response)

Applicant’s father-in-law and mother-in-law are deceased. (Item 5 at 30-31) In September 2011, Applicant surrendered his Afghan passport to his facility security officer. (Item 5 at 33)

Applicant recently “purchased a nice home and a beautiful minivan” in the United States. (FORM response) He said he renounced his Afghan citizenship; however, he did not explain how he renounced his Afghan citizenship. (FORM response)

## **Character Evidence**

Applicant provided the materials he used to apply for a SIV to immigrate to the United States in 2007. He provided letters from the following entities: an Army staff sergeant; an Army first lieutenant; an Army brigadier general; a liaison officer of the National Directorate of Security; a paralegal of the Afghanistan Consular Department;

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<sup>4</sup>The facts in this paragraph are from the following documents: Item 6; Item 7; Applicant’s SOR response; and Applicant’s FORM response.

and 11 certificates of appreciation. (FORM response) The documentation establishes Applicant's dedication, loyalty, responsibility, and trustworthiness when he worked as part of the local national population supporting the U.S. Army in Afghanistan.

Applicant has no reportable criminal offenses, excessive alcohol consumption, drug offenses, or derogatory financial information. (Item 5)

## **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 in the next two years. On May 2, 2012, the United States and Afghanistan signed the Enduring Strategic Partnership Agreement. This agreement demonstrates the United States' long-term commitment to strengthen Afghanistan's sovereignty and stability, in support of the goal of suppression of terrorism. The United States' extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to its citizens and residents of Afghanistan and Afghan Government problems developing and complying with the rule of law.

## **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.

The concerns alleged in SOR ¶¶ 1.a and 1.b, relating to Applicant's spouse and child living in Afghanistan and receiving \$300 monthly from Applicant, are mitigated because they are now residents of the United States. The concern about Applicant's siblings living in Bulgaria and Pakistan in SOR ¶¶ 1.g and 1.h are mitigated because the record is not sufficiently developed to establish a security concern.

AG ¶ 7(d) does not apply because Applicant's spouse's contacts with her siblings and Applicant's contacts with his siblings-in-law are not alleged as a security concern in the SOR or sufficiently developed in the record.<sup>5</sup>

Applicant, his spouse, daughter, mother, father, and nine siblings were all born in Afghanistan. One sibling is deceased. Applicant's spouse, parents, daughter, and five siblings are citizens of Afghanistan. Applicant's parents and five siblings are residents of Afghanistan. His father served in the Afghan Army for approximately 25 years, retired in 1980, was a field-grade officer when he retired, and receives a small retirement from the Afghan Government. He provides \$300 to \$400 monthly to his parents.

Applicant has frequent contact with his parents and several of his siblings living in Afghanistan. His frequent contact is an objective manifestation of his affection for his family members living in Afghanistan. Applicant is concerned about their welfare. There are widely documented safety issues for residents of Afghanistan because of terrorists and insurgents. Applicant has voluntarily shared in those dangers, and he is willing to do so in the future. Hundreds of Afghan linguists, supporting U.S. forces, have family living in Afghanistan. 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 to safeguard them from terrorists or the Taliban from the Afghan or U.S. Governments. On the other hand, there is no evidence that they are under any more danger than any other resident of Afghanistan.

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<sup>5</sup> Applicant disclosed that he has 4-5 siblings-in-law living in Afghanistan, and he has contacts with them once or twice a month. (Item 6) Three of them are or have been affiliated with the Afghan Government. (Item 6)

The mere possession of close family ties with a family member living in Afghanistan, 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 relationship of Afghanistan with 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 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.

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 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 has an enormous problem with terrorism. Applicant's relationship with family members living in Afghanistan 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 by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his family living in Afghanistan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) 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) to 8(c) have limited applicability. Applicant has frequent contact with several of his relatives, who live in Afghanistan. His loyalty and connections to his relatives living in Afghanistan are a positive character trait. However, for security clearance purposes, those same connections to his family living in Afghanistan negate the possibility of full mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Afghanistan citizens] could create a risk for foreign influence or exploitation."

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; however, they are not as strong as his connections to Afghanistan. In 2008, less than six years ago, Applicant moved to the United States. In 2011, he became a U.S. citizen. His spouse and daughter are permanent residents of the United States, and at least one sibling will be a resident of the United States in the near future; however, his spouse and daughter have not yet become U.S. citizens. Applicant's years of support to the U.S. Army in Afghanistan as a linguist, including the dangers that

service entailed, weighs towards mitigating concerns. 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 indirectly, his family's relationships with other Afghan citizens living in Afghanistan. He frequently communicates with his parents and several siblings living in Afghanistan. There is no evidence, however, that terrorists, criminals, the Afghan Government, or those conducting espionage have approached or threatened Applicant or his family in Afghanistan to coerce Applicant or his family for classified or sensitive information.<sup>6</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, 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, and Applicant's potential access to classified information could theoretically add risk to Applicant's family from lawless elements in Afghanistan.

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. Applicant is not required to report his contacts with family members living in Afghanistan.

AG ¶ 8(f) has limited application because there is no evidence that Applicant has any interest in property or bank accounts in Afghanistan. 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 are significant, and his connections to the United States are of relatively recent vintage. His U.S. Government employment, performance of linguist duties in a combat zone, and U.S. citizenship are also important factors weighing towards mitigation of security concerns; however, his connections to the United States taken together are insufficient to fully overcome the foreign influence security concerns under Guideline B raised by his

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<sup>6</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.

connections to his parents and siblings living in Afghanistan. Foreign influence concerns under Guideline B are not mitigated.

### **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.

Applicant presented some important evidence weighing towards approval of his access to classified information; however, it is not sufficient to merit approval of Applicant's access to classified information. In 2008, Applicant emigrated from Afghanistan to the United States, and in 2011, he became a U.S. citizen and took an oath of allegiance to the United States. He recently purchased a house and minivan in the United States. His spouse and his daughter live in the United States.

Applicant was approved for a SIV to immigrate to the United States in 2008. He provided five letters and 11 certificates of appreciation, establishing his dedication, loyalty, responsibility, and trustworthiness as part of the local national population supporting the U.S. Army in Afghanistan. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations.

Applicant has been employed as a linguist for several years in Afghanistan. He served in a U.S. designated combat zone, and he made contributions to the U.S. military at personal risk. He is willing to continue to serve in Afghanistan in support of U.S. Armed Forces as a linguist, 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 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 heavily towards approval of his security clearance.

The foreign influence security concerns are more compelling than the mitigating information. Applicant, his spouse, daughter, parents, and siblings were all born in Afghanistan. His spouse, parents, daughter, and seven siblings are citizens of Afghanistan. Applicant's parents and five siblings are residents of Afghanistan. His father served in the Afghan Army for approximately 25 years, retired in 1980, was a field-grade officer when he retired, and receives a small retirement from the Afghan Government.<sup>7</sup> He provides \$300 to \$400 monthly to his parents.

Applicant has close connections and frequently communicates with his parents and siblings, who are citizens and residents of Afghanistan. His family in Afghanistan 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.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there.<sup>8</sup> Afghanistan is a very dangerous place because of violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the Afghan Government, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The Afghan Government does 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 and Afghan Governments are allies in the war on terrorism. The United States is committed to the establishment of a free and independent Afghan Government. Afghanistan and the United States have close relationships in diplomacy and trade.

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

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<sup>7</sup>Applicant's parents do not receive any special protection from the Afghan Government; however, even if they did, it would not change the outcome of this case. The Appeal Board emphasized the risk to a prominent Afghan official due to his position in the Afghanistan Government, even though that relative received special 24-hour protection from the Afghan Government in a case involving an Afghan-linguist applicant. See ISCR Case No. 09-06457 (App. Bd. May 16, 2011) (reversing grant of security clearance because applicant's father returned to Afghanistan and became a high-level Afghan Government official, even though the applicant had very strong connections to the United States: applicant, his wife, and father became U.S. citizens more than 10 years previously; applicant's three children were all born in the U.S. and live in the U.S.; all of applicant's siblings live in the U.S.; and applicant and his family left Afghanistan in the early 1980s.). See also ISCR Case No. 12-07647 (App. Bd. Nov. 7, 2013) (reversing grant of security clearance primarily because applicant had property in Afghanistan and to a lesser degree because his in-laws remained in Afghanistan).

<sup>8</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).

circumstances in the context of the whole person. I conclude foreign influence concerns are not mitigated, and eligibility for access to classified information is denied.

### **Formal Findings**

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraphs 1.c to 1.f:	Against Applicant
Subparagraphs 1.g and 1.h:	For Applicant
Subparagraph 1.i:	Against 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 denied.

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Mark Harvey  
Administrative Judge