



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 13-00565
)
Applicant for Security Clearance)

Appearances

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

03/21/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He is serving as a linguist for U.S. forces in Afghanistan. He has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest involving his connections to Afghanistan in favor of the U.S. interest. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on July 24, 2013, the DoD issued an SOR detailing security concerns under Guideline B (Foreign

¹ 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.

Influence). DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On August 28, 2013, Applicant answered the SOR and requested a hearing. On December 30, 2013, I was assigned the case. On December 30, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on January 14, 2014. I admitted Government's Exhibits (Ex) 1 through 9 and Applicant's Exhibits A through W, without objection. Applicant, his wife, and son testified at the hearing. On January 23, 2014, DOHA received the hearing transcript (Tr.).

Procedural Ruling

Department Counsel requested administrative notice of facts concerning Afghanistan. Department Counsel provided supporting documents to show detail and context for those facts. 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)). There was no objection about the accuracy of the materials provided, and 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.

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 52-year-old cultural advisor and linguist for the U.S. Forces in Afghanistan. (Ex. 1, Tr. 53) He works in counter-intelligence interviewing local Afghan employees, trying to filter people who would do harm to U.S. forces. (Tr. 55) He has also worked in the prisons interviewing Afghan inmates. (Tr. 54) He travels to various locations in Afghanistan for a week to a month to accomplish the mission. (Tr. 56) He has been working in Afghanistan since January 2013. From June 2012 through January 2013, he was unemployed and lived off financial assistance for low income families provided by a state government in the United States. (Ex. 2)

In May 1984, Applicant joined the Kansas Army National Guard. (Ex. 9) He started in the infantry and ended in helicopter avionics. (Tr. 31) In October 1991, he was honorably discharged at the expiration of his service obligation as a specialist (E-4). (Ex. 9, Ex. L) While in the National Guard, he received a certificate of achievement (Ex. M) and a decoration for long and faithful service. (Ex. N)

Applicant has received numerous letters of appreciation and gratitude. (Ex. A – Ex. F) Some of those letters read in part:

Since coming on board, you have proven to be an invaluable member of our team and family. It is your commitment and drive to the men and women in uniform that enables [his employer] to achieve and succeed with our mission. Your continued display of can-do attitude, eagerness to participate, contributions to the team, as well as your willingness to accept greater responsibility, identify you as one of the exceptional employees whose efforts promote [his employer] as an industry leader, able to deliver certainty, everywhere, every time. (Ex. C)

Applicant has been working in Afghanistan since 2002. (Ex. 2, Ex. 3) From August 2002 through December 2004, he was a building advisor and then a public relations advisor working at the Ministry of Rural Rehabilitation and Development promoting the building of roads, schools, and wells in rural areas. (Ex. 2, Ex. 3, Tr. 41) From January 2005 through October 2006, he was a project officer and then a program officer working for the United Nations. (Ex. 2, Ex. 3)

From November 2006 through February 2008, Applicant was a procurement specialist at the Ministry of Public Works in Afghanistan working for the World Bank. (Ex. 2, Ex. 3) From March 2008 through August 2008, he was a senior procurement advisor for a different company. From August 2008 through March 2010, he was a senior procurement advisor and project director. (Ex. Q) In July 2009, he traveled to India on business on his Afghan passport and in February 2010, he again traveled to India with his wife and son for medical treatment. (Ex. 2, Ex. 3) From March 2010 through June 2012, he worked in Afghanistan for a different contractor working in an advisory capacity, overseeing hiring and training, and holding the position of program director and senior advisor. (Ex. 2, Ex. 3, Ex. S, Ex. V)

In March 1961, Applicant was born in Afghanistan. His father owned the second largest construction company in Afghanistan. (Tr. 25) Following the Soviet Union's invasion of Afghanistan in December 1979, his father was put in prison for 21 months. (Tr. 26) His father was later imprisoned for three months and a third time for one month. Applicant was living in the United States at the time of the second two imprisonments. (Tr. 26)

Applicant attended grade school and high school in Afghanistan, graduating from high school in October 1979. (Tr. 23) Two months later, the Soviets invaded Afghanistan. From March 1980 through May 1980, he attended university in Afghanistan. (Ex. 2) He wanted to attend medical school, but the Soviet Regime provided him with a scholarship to study engineering in the Ukraine. (Tr. 24) He was given the choice to study in the Ukraine or go to prison. (Tr. 26) He chose to flee to Pakistan, where he stayed as a refugee from November 1980 through July 1981. (Ex. 2) In July 1981, he immigrated to the United States as a refugee. (Ex. 1, Ex. 2) He chose to come to the United States for better opportunities and freedoms.

From August 1987 through July 1992, Applicant attended a state university in the United States. (Tr. 68) In July 1992, he obtained a Bachelor's degree in electrical engineering. (Ex. 2, Ex. K) The G.I. bill paid part of his educational costs. (Tr. 30) In January 1988, Applicant became a naturalized U.S. citizen. (Ex. 1, Ex. 2, Ex. 7) Following graduation, at age 30, he was getting pressure from his father to return home and get married. (Tr. 32) He returned to Afghanistan after being gone almost 13 years. (Tr. 38) In January 1993, he married his wife, an Afghan citizen, in Afghanistan. (Ex. 1, Tr. 17) At that time, his family was living in Pakistan because the civil war and the collapse of the communist regime made their home in Afghanistan a dangerous place due to fighting and rocket attacks. (Tr. 32)

Following Applicant's marriage, it was his intent to remain in Afghanistan three months before bringing his wife to the United States. (Tr. 33) From August 1993 through October 1996, he lived in Afghanistan. (Ex. 2) He was unemployed for six months before opening a small pharmacy store. (Ex. 2, Tr. 35) During this dangerous time, Applicant was struck by a bullet that did no serious damage. (Tr. 34) During this same period, many people were killed including some of his relatives. (Tr. 35)

From October 1997 through December 1997, Applicant accompanied his father-in-law to India, where his father-in-law obtained medical treatment. He traveled to India on an Afghan passport. (Ex. 2) While he was in India, the Taliban came to power. (Tr. 35) He was unable to return to Afghanistan due to the Taliban uprising. At that time, his family and his wife's family moved to Pakistan. (Tr. 36) From January 1997 through June 1997, he lived with his wife's family who had fled to Pakistan. From June 1997 through March 2000, he lived by himself in the United States. (Ex. 2)

From March through August 2000, Applicant visited his wife's family in Pakistan. From August 2000 through October 2001, he was a pizza shop manager in England for a shop owned by his brother. (Ex. 2) He returned to live with his wife and her family in Pakistan before his wife and family moved back to Afghanistan in March 2002. Applicant has lived and worked in Afghanistan since April 2002. (Ex. 2) In July 2004, he voted in an Afghan presidential election.

Applicant has held Afghan passports, the most current of which expires in June 2014. He used that Afghan passport in 2009, when his employer requested he use his Afghan passport, and in 2011, when he took his wife to Pakistan for medical treatment. (Tr. 72) In February 2013, he surrendered his passport to the Facility Security Officer (FSO). (Ex. 6) He has owned real estate in Afghanistan since become a naturalized U.S. citizen. (Ex. 2) He has never served in a foreign military and has no requirement to do so. (Ex. 2)

In 2005, Applicant opened a bank account in Afghanistan, which, as of February 2013, had a balance of \$4,000 to \$5,000, which is his salary for two weeks. (Ex. 2, Tr. 52, 90) In 2011, he opened another bank account in Afghanistan so his wife could have her own account. (Ex. 2) The balance, as of February 2013, was \$800. (Ex. 2) He has closed one of the accounts. (Tr. 52, 89) He cannot close the other account without

physically going to the bank to complete the paperwork. (Tr. 52) While located in Afghanistan, Applicant is prevented from leaving the area controlled by U.S. forces. (Tr. 52) He maintains bank accounts in the United States that have balances of \$8,000 to \$9,000. (Tr. 53)

Applicant's wife owed an apartment in Afghanistan where they lived until June 2012, when the house was sold and the family moved to the United States. In 2004, Applicant purchased a lot for \$4,400 on which he hoped to build a house. (Tr. 49) This never happened. Applicant sold the lot, valued at \$9,000 to his brother. (Ex. 2, Ex. O, SOR Response) From 1997 through 2000, Applicant sent his father \$300 every two weeks when his wife, mother, father, and siblings were living as refugees in Pakistan. (Ex. 2) The money was used to pay living expenses.

In late 2007 or early 2008, Applicant began the immigration process to sponsor his wife to become a U.S. citizen. (Tr. 41) The original application was lost. However, in January 2012, a new application was approved for permanent resident alien status and in June 2012, his wife and three children moved to the United States. (Ex. 2) His wife was born in Afghanistan. She currently lives in the United States. Applicant's mother, a housewife, was born in Afghanistan. While living in Afghanistan, he had contact with her three times a week. (Ex. 2) Since June 2012, when living in the United States, he has had weekly telephone contact with her. His father died in July 2008. He was a retired business man. His father-in-law, who had been the general treasurer of the Afghanistan National Bank until the arrival of the Taliban, died in December 2010. (Ex. 2, Ex. 4, Tr. 82, 86) His mother-in-law died in 1984. (Ex. 2, Ex. 4)

Applicant has eight brothers and six sisters. (Tr. 51) He is the oldest of his siblings. (Tr. 95) Since returning to Afghanistan, after selling his home in June 2012 and moving his family to the United States, he has not talked to his mother, and he talks to only two of his siblings living in Afghanistan. (Tr. 56) While working in Afghanistan, he is not permitted to leave the area controlled by U.S. forces. (Tr. 57) Except for his sister and youngest brother, all of his relatives believe he is in the United States. (Tr. 58, 79) In the past year, he has talked to these two five times. (Tr. 79) He has not told his mother, who is in poor health, and lives a few miles away, that he is in country. (Tr. 59)

Applicant's six sisters are Afghan citizens. One sister, a housewife, has resided in Germany since 2000. (Ex. 2, Ex. 4) Applicant has telephone contact with her every two months. His brother-in-law is a used car salesman in Germany. (Ex. 2, Ex. 4) He had yearly telephone contact with another sister, a housewife, who has resided in the United Arab Emirates (UAE) since 1998, but has not talked with her in three years. (Tr. 81) Two of his sisters are unemployed and take care of their mother, who is very ill. (Tr. 50) His mother lives with two of his brothers, two of his sisters, their spouses, and their children. Another brother lives six or seven kilometers away. (Tr. 27, 28) He has yearly telephone contact with two other sisters, housewives, who are citizens and residents of Afghanistan. (Ex. 2, Ex. 4)

Applicant has one sister who lives in Russia whose husband, a resident but not a citizen of Russia, runs a clothing shop. (Tr. 64, SOR Response) His sister married in 2012, and Applicant has yet to meet her husband. He has not seen a picture of her husband. (Tr. 63, 75)

Applicant has six brothers who were born in Afghanistan. One brother is a naturalized U.S. citizen living in the United States. (Ex. 2, Ex. 4, Tr. 64) This brother works as a linguist at a U.S. military installation in the United States. (Tr. 65) Another brother lives in Canada with his wife and three children, and he works in a pizza shop. (Tr. 65)

Every three or four months, Applicant has telephone communication with one brother who runs a travel agency in England and is a United Kingdom citizen. (Tr. 76) He has no contact with another brother who owns a pizza shop in England. (Ex. 2, Ex. 4) Applicant has no contact with a brother, a shoe salesman, who is a citizen and resident of Afghanistan. (Tr. 61) Every three months Applicant contacts his brother who is a student in Afghanistan. (Ex. 2, Ex. 4) Applicant has yearly contact with a brother who is a partner in a clothing store in the Ukraine, but does not live in the Ukraine. (Tr. 61) This brother is a citizen and resident of Afghanistan. Applicant has no contact with another brother, citizen and resident of Afghanistan, who is unemployed. (Ex. 2, Ex. 4) His youngest brother is part owner of a shop that sells china and electrical appliances. (Tr. 61)

Applicant has talked to his in-laws a couple of times. (Tr. 80) His wife has four brothers who live in Germany, United Kingdom, and Afghanistan. (Tr. 83) His wife's brother, a taxi driver, is a citizen of the Netherlands who has resided in England since 2005. His brother-in-law has been gone from Afghanistan for 15 years. (Tr. 82) Applicant has contact with him every three months. Applicant has monthly contact with another brother-in-law, who works for a university and is a United Kingdom citizen living in England. He has monthly contact with his wife's sister, a housewife, who is a citizen and resident of the United Kingdom. He talked to his oldest brother-in-law, who is an Afghan citizen living in Germany, the week before the hearing and 11 months before that. (Tr. 80) His brother-in-law in Afghanistan used to work for the Red Cross and now works for an Afghan program supported by the United States that supports projects in rural areas building bridges, roads, and schools. (Tr. 83, 84) This brother-in-law is a second lieutenant who has been in the Afghan Ministry of Defense for two years. (Tr. 86) Applicant has had no contact with this individual. (Tr. 86) This brother-in-law had inaccurately been described as a member of the Afghan State Intelligence Agency.

In 2008, upon his father's death, Applicant and his 13 siblings inherited a five bedroom home in Afghanistan. (Ex. 3, Tr. 51) It is currently being rented for \$150. (Tr. 51) His father also had some undeveloped land. His father also had a seven bedroom home in Afghanistan estimated to be worth \$100,000 where his mother, five of his siblings, their spouses, and their children live. (Ex. 3)

Two of Applicant's children were born in Afghanistan, and two of his children were born in Pakistan. All of his children were born after he became a naturalized U.S. citizen. His children were born in 1995, 1997, 2001, and 2005. (Ex. 4, Tr. 45) His three youngest children live in the United States. (Tr. 45) His three youngest children have adapted well to living in the United States. (Tr. 45) Applicant owns a home in the United States with a fair market value of \$160,000. (Ex. W, Tr. 51, 91)

In January 1995, Applicant's daughter was born abroad to a U.S. citizen. His daughter holds a U.S. passport. In September 2011, his daughter, who was then 16 years old, ran away from home while Applicant was living in Afghanistan, and Applicant has not had any contact with her since then. (Tr. 46) He has since learned she has married.

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. 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 currently has thousands of combat troops deployed to Afghanistan. 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 citizens and residents of Afghanistan and Afghan Government problems developing and complying with the rule of law.

Policies

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 must 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the interests of 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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

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

(e) 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.

Applicant's mother and seven siblings live in Afghanistan. Additional siblings live in Russia, the UAE, two in the United Kingdom, one in Canada, and one in the United States. In the past 11 months, he has contacted his sister and brother living in Afghanistan five times. He also maintains an Afghan bank account which contains \$4,000 to \$5,000, which represents his salary for two weeks. He transferred a piece of property to his brother and may receive some inheritance that would be divided with his 13 siblings.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his siblings. Influence, pressure, or coercion applied to Applicant's siblings living in Afghanistan could result in a security concern. Applicant's communications with his siblings living in Afghanistan are minimal. His communications with his in-laws living in Afghanistan are almost nonexistent. His ongoing communications over the years with siblings living in Afghanistan are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." His relationship with his siblings living in Afghanistan creates a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help siblings living in Afghanistan. For example, if terrorists in Afghanistan wanted to expose Applicant to coercion, they could exert pressure on his siblings living in those countries. Applicant would then be subject to coercion and classified information could potentially be compromised.

Applicant's possession of close family ties with his siblings living in dangerous countries, such as Afghanistan, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse 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, a family member is associated with or dependent upon the government or

the country is known to conduct intelligence collection operations against the United States. The relationships of Afghanistan with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his siblings living in those countries 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 his siblings living in Afghanistan, which is a dangerous country for anyone with a close link to the U.S. Government and classified material.

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, his spouse, his siblings, or his in-laws living in Afghanistan, 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 a significant problem with terrorism. Applicant's relationships with family members living in Afghanistan create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist family members in those countries by providing sensitive or classified information.

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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant had contact with his sister and youngest brother living in Afghanistan and less frequent contact with his mother and other siblings living in Afghanistan. His contact with his sister in Russia is limited. He has yet to see a picture of her husband and has not had any contact with her in three years. His contact with his in-laws, including his brother-in-law who is a junior officer in the Afghan Ministry of Defense, has been very limited to non-existent. His loyalty and connections to his family living in Afghanistan are positive character traits. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with relatives living in Afghanistan] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) 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 including home ownership. Following the October 1979 Soviet invasion in Afghanistan in, Applicant was given the choice to study engineering in the Ukraine or go to prison. He chose to flee to Pakistan. His father was imprisoned three times by the Soviets. In July 1981, he immigrated to the United States as a refugee. In January 1988, Applicant became a naturalized U.S. citizen. While in the United States, he obtained his Bachelor's degree from a state university in the United States. He was also a member of the state Army National Guard. Three of his children live with him and his wife in the United States. He has not had any contact with his oldest daughter who has lived in Afghanistan since September 2011, when she ran away from home at age 16. All of his children are U.S. citizens.

Applicant is now 52 years old. As part of his naturalization as a U.S. citizen he took an oath and swore allegiance to the United States. When he volunteered to serve in Afghanistan in a combat zone as a linguist, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries.

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. He has communicated five times in the last 11 months with his sister and youngest brother living in Afghanistan, less frequently with other siblings living in Afghanistan, and has had no contact with some of his siblings. There is no evidence, however, that terrorists, criminals, the Afghanistan Governments, or those conducting espionage have approached or threatened Applicant, his spouse, or their family to coerce Applicant for classified or sensitive information.² As such, there is a reduced possibility that Applicant or his spouse's family living in Afghanistan would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his family living in Afghanistan is from terrorists and other lawless elements and not the Afghanistan Government.

While the U.S. 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' sizable financial and diplomatic investment in Afghanistan. Applicant's family in Afghanistan will become potential targets of terrorists because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some 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 or his spouse's involvement with family members living in Afghanistan. Applicant is not required to report his contacts with citizens or residents of Afghanistan.

²There 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.

Applicant's Afghan bank account and the possible inheritance of some property in Afghanistan is of minimal concern. It is not a substantial business, financial, or property interest as referenced in AG ¶ 7(e). If it were, then AG ¶ 8(f) would apply because the value of that foreign financial or property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual. The property transferred to his brother is used for his mother's medical expenses.

In sum, Applicant's connections to his siblings and in-laws living in Afghanistan are significant. He is close to his siblings and continues to communicate with some of them. Applicant's connections to the United States are strong. His spouse and three children live in the United States. These connections to the United States, including home ownership, are sufficient to outweigh his connections to his family in Afghanistan. Foreign influence security concerns are mitigated under Guideline B. Even if security concerns are not mitigated under Guideline B, they are 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.

The factors weighing against approval of Applicant's security clearance are less substantial than the factors weighing towards its approval. Applicant has siblings who are residents and citizens of Afghanistan. Even though he lives and works within a few miles of his ill mother and other siblings, he has not told them he is working and living in Afghanistan. He has told one brother and one sister he is in Afghanistan. His connections to his family in Afghanistan make Applicant more vulnerable as a target of

coercion by lawless elements in those countries. His family in those countries will be at a greater risk if his clearance is granted.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there.³ Those countries are dangerous places because of violence from terrorists and other lawless elements. Terrorists continue to threaten the Afghanistan Government, the interests of the United States, and those who cooperate and assist the United States. The Afghanistan Government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Afghanistan Governments are allies in the war on terrorism. Afghanistan and the United States have close relationships in diplomacy and trade. Afghanistan and the United States occasionally have profound policy disputes.

Applicant's connections to the United States warrant greater weight than his connections to his siblings living in Afghanistan. There is no evidence that Applicant has engaged in criminal activity, abused illegal drugs, or committed any security violations. When he was naturalized as a U.S. citizen, he swore allegiance to the United States. His spouse and three children reside in the United States. He volunteered to serve as a linguist with U.S. forces in Afghanistan. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant or his family living in Afghanistan.

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.

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 to 1.k: 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.

³ 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).

CLAUDE R. HEINY II
Administrative Judge