



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



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| In the matter of: |) | |
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| |) | ISCR Case No. 13-00627 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fled his native Afghanistan for Pakistan with his family as a youth in 1979. He immigrated to the United States in December 1991, and he acquired his U.S. citizenship in January 1999. In 2008, his spouse immigrated to the United States from Pakistan, but a heightened risk of foreign influence exists because of his close relationship and contacts to his sister and her family in Afghanistan. Clearance denied.

Statement of the Case

On October 30, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline B, foreign influence, and explaining why it was unable to grant a security clearance to Applicant. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR on November 26, 2013, and he requested a decision without a hearing. On February 6, 2014, the Government submitted a File of Relevant Material (FORM) consisting of eight documents (Items 1-8), although only three were identified as Government exhibits (GEs).¹ Item 8 was a request for administrative notice of certain facts pertinent to the Islamic Republic of Afghanistan (Afghanistan). On February 7, 2014, the Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on March 5, 2014. In his March 10, 2014 rebuttal to the FORM, Applicant did not object to any of the Government's exhibits. Applicant's rebuttal was accepted into the record as Applicant exhibit (AE) A without objection. On April 3, 2014, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Procedural and Evidentiary Rulings

In the FORM, the Government requested that the DOHA administrative judge take administrative notice of certain facts pertinent to Afghanistan and its foreign relations. The request for administrative notice was based on six official U.S. government publications.² Applicant did not file any objections to the Government's request for administrative notice or to any specific facts set forth pertaining to Afghanistan. Accordingly, I took administrative notice, subject to my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See *e.g.*, ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007). The facts administratively noticed are set forth in the Findings of Fact, below.

¹ The Government submitted Applicant's Electronic Questionnaire for Investigations Processing (Item 5) as GE 1; Applicant's response to Foreign Travel interrogatories (Item 6) as GE 2; and Applicant's Counterintelligence-Focused Security Screening Questionnaire (Item 7) as GE 3.

²The Government relied on excerpts of the Congressional Research Service's *CRS Report for Congress, Afghanistan: Post-Taliban Governance, Security and U.S. Policy*, dated October 23, 2013, and the DOD's *Unclassified Report on Progress Toward Security and Stability in Afghanistan*, dated November 2013. Facts for administrative notice were also based on four U.S. State Department publications: *Country Reports on Terrorism 2012, Chapter 2-Country Reports: South and Central Asia*, dated May 30, 2013; *Country Reports on Human Rights Practices for 2012: Afghanistan*; *Travel Warning: Afghanistan*, dated August 23, 2013; and *Country Specific Information: Afghanistan*, dated August 28, 2013. The source documents identified in the FORM were provided to the Applicant with copies to the DOHA administrative judge to be furnished on the request. The documents were all available on the Internet. See www.state.gov for the State Department documents, <http://fpc.state.gov> for the CRS report, and www.defense.gov for the DOD report. On reviewing the source documents, it was noted that the State Department had issued an updated travel warning on February 20, 2014, and a *2013 Human Rights Reports: Afghanistan* on February 27, 2014. Those documents revealed ongoing concerns about travel to Afghanistan and human rights practices in Afghanistan.

Findings of Fact

The SOR alleges under Guideline B, foreign influence, that Applicant's sister (SOR 1.a), his nephews (SOR 1.b),³ his niece (SOR 1.c), and his brother-in-law (SOR 1.d) are resident citizens of Afghanistan. In a detailed response, Applicant admitted the Afghan residency and citizenship of his sister (a housewife), his nephew (a student), his niece (married), and his brother-in-law (his sister's husband), but he indicated that none of them know about his job. Applicant's admissions to the Afghan residency and citizenship of family members are accepted and incorporated as findings of fact. After considering the Government's FORM, including Applicant's Answer (Item 4) and his rebuttal to the FORM (AE A), I make the following findings of fact.

Applicant is a 49-year-old defense contractor employee, who has been working as a linguist for the U.S. military in Afghanistan since October 2011.⁴ (GEs 1, 3; AE A.)

Applicant was born in Afghanistan in August 1964. He is the fourth of six children (five sons and one daughter) born between July 1960 and February 1968 to Afghan native citizens. (GE 1.) His father worked as a bus driver for a U.S. company in Afghanistan. (GE 3; AE A.) There is no evidence that his mother ever worked outside the home. In January 1979, Applicant and his family fled Afghanistan for Pakistan, where he spent the next 12 years. About 2.5 years after Applicant's father applied for the family to immigrate to the United States, Applicant and his family entered the United States as refugees in December 1991.⁵ (GEs 1, 3.)

In June 1992, Applicant married a native of Afghanistan. Applicant's spouse was living in Pakistan⁶ and had two sons, who were born in Pakistan in June 1989 (stepson

³ Applicant reported four relatives living in Afghanistan in August 2013: his sister, his brother-in-law, his niece, and a nephew. (GE 2.) When he answered the SOR in November 2013, he admitted SOR 1.b, "Your nephews are citizens and residents of Afghanistan," but in his detailed answer, he named only one nephew; a high school student, who appears to be his sister's son. Department Counsel noted the inconsistency in the FORM at footnote 8. Applicant has named two other nephews. He traveled with one of these nephews from Afghanistan to the U.S. Embassy in Pakistan in May 2010. This nephew was living in Afghanistan as of September 2011 (GE 3), although it is unclear whether this nephew is still in Afghanistan.

⁴ In footnote 21 of the FORM, the Government referenced an October 25, 2007 decision adverse to Applicant on allegations "virtually identical to SOR allegations 1.a through 1.d and 1.j-1.k in this case." No evidence was presented of any 2007 decision denying Applicant security clearance eligibility. Furthermore, only four allegations were raised against Applicant in this case.

⁵ Applicant's sister may well have remained behind in Pakistan when Applicant's family came to the United States. She was living in Pakistan as of 2000 and in Afghanistan as of 2005. (GE 2.)

⁶ On a counterintelligence-focused screening questionnaire completed in late September 2011 (GE 3), Applicant reported a trip to Pakistan around January 1994 on a U.S. travel document issued around October 1993. Yet, in response to DOD interrogatories, Applicant indicated that he returned to Pakistan to marry his spouse, and he explained, "I MARRIED WITH MY WIFE IN PAKISTAN IN 06/1992. I WAS IN USA THAT TIME. MY SISTER [sic] HELP ME IN THAT ISSUE. ME AND MY WIFE MARRIED ONLIN [sic]. THEN I WENT TO PAKISTAN TO VISIT MY WIFE IN 01/2000." (GE 2.)

#1) and in February 1991 (stepson #2). Her father had worked as an auto body technician in Afghanistan before his death in 1984. Applicant's spouse's mother was a housewife living in Pakistan as of June 1992. She died in 1993. (GE 3.)

Applicant began working as an auto body technician in the United States in August 1993 while his spouse and stepsons remained in Pakistan. Through his spouse's uncle in Pakistan, he sent his spouse between \$200 and \$300 each month for her support. On occasion, he sent his spouse \$500. (GE 3.)

In late January 1999, Applicant became a naturalized U.S. citizen (GE 1), and he was issued his first U.S. passport in February 1999. In January 2000, Applicant traveled to Pakistan to visit his spouse, his sister, and his brother-in-law. (GE 3.) In June 2002, Applicant had a son, who was born in the United States.⁷ (GE 1.)

By May 2005, Applicant's sister and her spouse had returned to Afghanistan from Pakistan. Applicant traveled to Afghanistan with nephew #1, a U.S. resident citizen, to visit Applicant's sister and her husband from May to June 2005. (GEs 1, 3.)

In November 2005, Applicant and his mother went to Afghanistan to visit his sister. They transited via two cities in Pakistan (GEs 1, 3), although there is no evidence that Applicant visited with his spouse during that trip. Applicant and his brothers had agreed that their sister could have the family's property and its two-story, five-bedroom home in Afghanistan. During this November 2005 trip, Applicant learned that his sister's home had been fraudulently signed over to men who intended to take the land from his family. Local authorities had accepted illegal title documents and demanded large sums of money to return the land unlawfully seized. Applicant intervened with the local elders "over the course of the next 4 visits,"⁸ and he eventually succeeded in the return of the family homestead to his sister's control. (AE A.)

Applicant returned to the United States alone in December 2005. His mother remained in Afghanistan with his sister. Applicant sent around \$200 every three to four months to his mother in Afghanistan until 2010, when he brought his mother back to the United States. (GE 3.)

Applicant traveled to Pakistan and Afghanistan to visit his family members for about 30 days from November 2006 to December 2006. He traveled on his U.S. passport, which he renewed in October 2006. (GEs 1, 3.)

By February 2008, Applicant was having serious financial problems in the United States. His mortgage lender had initiated foreclosure on his home, which he had owned

⁷Applicant's son was born in November 2002 in the United States. Applicant's spouse reportedly did not come to the United States until 2008. Whether or not she is the child's mother, the boy was living in Applicant's household as of September 2011. (GE 1.)

⁸Applicant first mentioned the circumstances surrounding his family's land in Afghanistan in his rebuttal to the FORM (AE A). It is unclear when his sister regained control of the family's land with his intervention.

since December 1998. Applicant resigned from his job as an auto body technician, and he went to Afghanistan in February 2008. He stayed with his sister and mother in the family home until November 2008. (GEs 1, 3.)

On his return to the United States in November 2008, Applicant found work as an auto body technician. In March 2009, he filed for a Chapter 7 bankruptcy discharge of about \$130,000 in debt, which was granted around June 2009.⁹ (GE 3.)

In December 2009, Applicant went to Afghanistan to see his mother and sister. He stayed at his sister's home for about 90 days before returning to the United States with his mother in March 2010. During the trip, Applicant went to Pakistan for six days with nephew #2 to help his nephew obtain a U.S. visa. (GEs 1, 3.) After he returned to the United States, Applicant provided financially for his sister's medical needs, sending her between \$100 and \$200 on occasion. (AE A.)

In September 2010, Applicant was interviewed for a linguist position in Afghanistan by a defense contractor. He continued to work as an auto body technician while awaiting word about his potential hiring. On September 19, 2011, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP), which he updated on September 28, 2011, for a linguist position with another employer. Applicant indicated that his mother and four brothers are naturalized U.S. citizens living in the United States, while his sister is a resident citizen of Afghanistan. His mother was living with brother #2. Applicant reported no contact with his oldest brother since 2000, even though he lived in the same town as this brother, and no contact with his two younger brothers since 1995/96. Applicant disclosed that his spouse (an Afghan citizen), stepson #1 (listed as a naturalized U.S. citizen), and stepson #2 (a Pakistani citizen), were living with him and his U.S. native-born son in a rental unit in the United States. Applicant listed his trip to Pakistan and Afghanistan in 2006; his stay of 270 days in Afghanistan in 2008; and his latest trip to Afghanistan, with six days in Pakistan, from December 2009 to March 2010. (GE 1.)

On September 28, 2011, Applicant completed a counterintelligence-focused security screening questionnaire. Among his foreign connections, he detailed the

⁹ Applicant's financial problems were not alleged in the SOR, so they cannot provide a basis for security disqualification. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Applicant's financial problems are relevant to the extent that they factored in his decision to live in Afghanistan from February 2008 to November 2008. About the Guideline B concerns, the evidence shows that Applicant continued to provide financially for his sister and, until 2010, also his mother, despite his own financial problems.

circumstances of his immigration to the United States; his financial support for his mother (until 2010) and for his sister in Afghanistan; and his foreign travel, including his latest trip to Afghanistan to accompany his mother on her return to the United States in March 2010. He reported no contact with brother #1, who works as a taxi driver in the United States, since 2004 (vs. 2000 on his e-QIP), or with his younger brothers since 1995, both of whom work as mechanics in the United States. Applicant reported daily contact with his mother and with brother #2, an auto body technician. Applicant indicated that both of his stepsons had Afghan citizenship, which was discrepant with the citizenship information previously reported on his e-QIP. Applicant reported ongoing contact once a month by telephone with his sister in Afghanistan. He listed contact once weekly in person with nephew #1, a U.S. resident citizen, but no contact since May 2010 with nephew #2, a student in Afghanistan. (GE 3.) In October 2011, Applicant was posted to Afghanistan as a linguist. (AE A.)

By mid-August 2013, Applicant was working as a linguist in Afghanistan for his current employer. In response to DOHA interrogatories, Applicant indicated that his spouse remained in Pakistan after their marriage until 2008. He provided evidence showing that his spouse had become a naturalized U.S. citizen in July 2012. He responded "No" to whether his spouse had traveled to Afghanistan or Pakistan after her U.S. immigration. Applicant listed four relatives residing abroad: his sister, his brother-in-law, a niece, and a nephew (nephew #3). (GE 2.)

As of November 2013, Applicant was in contact with his sister and her husband in Afghanistan once every two to three months by telephone. They discuss his sister's health and family affairs. Applicant also had contact with his nephew, a high school student, when he called his sister. Applicant had no contact with his married niece in Afghanistan. Applicant has provided no financial support for these Afghan relatives other than his sister, to whom he sends \$100 to \$200 "only when it is very necessary." Applicant has not informed these relatives in Afghanistan about his job or his place of posting. (Item 4.) The frequency of Applicant's contact with these family members in Afghanistan remained consistent through at least March 2014. (AE A.)

Applicant has no financial assets in Afghanistan. (GE 1.) He denies any interest in the family's homestead in Afghanistan. His sister has no source of income apart from her work on the land, and he does not intend to interfere in her affairs. Applicant's income from his work as a linguist in Afghanistan allows him to provide a comfortable life for his family in the United States. (AE A.) He is proud about serving the United States during the conflict in Afghanistan, and he can conceive of no situation that would lead him to betray the United States. (GE 3; AE A.)

In response to the Government's FORM, Applicant indicated that he has been recognized for his outstanding performance as a linguist in support of security and medical operations in Afghanistan, and that he applied for a "higher level of security clearance" at the request of his supervisors. (AE A.) Applicant presented no documentation confirming his linguistic contributions to the United States.

Administrative Notice

After reviewing U.S. government publications concerning Afghanistan and its relations with the United States, the facts for administrative notice set forth in the Government's February 4, 2014 request are accepted and incorporated herein. Additional facts for administrative notice follow:

Afghanistan has been an independent nation since August 19, 1919, after the British relinquished control. Following a Soviet-supported coup in 1978, a Marxist government emerged. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to an agreement known as the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union, which led to the withdrawal of Soviet forces in early 1989.

The mujaheddin were not a party to the negotiations for the Accords and refused to accept them. The country remained mired in a civil war. In the mid-1990s, the Taliban rose to power, largely due to the anarchy and the division of the country among warlords after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama bin Laden, to al-Qa'ida generally, and to other terrorist organizations.

After the September 11, 2001, terrorist attacks, the Taliban rejected U.S. demands that Afghanistan expel Osama bin Laden and his followers. U.S. forces and a coalition partnership commenced military operations in Afghanistan in October 2001 that forced the Taliban out of power by December 2001 and the installation of an interim government. President Hamid Karzai assumed the presidency in an October 2004 democratic election. He was declared president for a second term in November 2009, after an election marred by allegations of fraud.

Building the capacity of and reforming Afghan governance have been keys to the success of U.S. policy in Afghanistan. Afghanistan has made significant progress since the Taliban was deposed, and the al-Qa'ida core was significantly degraded by the death of Osama bin Laden and other key terrorist operatives in 2011. Despite threats of violence, millions of Afghan citizens voted in the country's third presidential election, which was held on April 5, 2014. As the votes are being tallied, the United States remains ready to work with the next president of Afghanistan and will continue to stand with the Afghan citizens as they work to build a democratic future.¹⁰ Although Afghan central government effectiveness has increased, local governance remains weak, and all levels of government are plagued by corruption. The Obama Administration remains concerned that Afghanistan's stability could be jeopardized after the current international security mission terminates at the end of 2014 because of corrupt Afghan governance and insurgent safe havens in Pakistan. Security in Afghanistan is

¹⁰ See U.S. Secretary of State John Kerry's Press Statement of April 5, 2014, which can be found at www.state.gov.

challenged by several armed groups, such as the Taliban, the Haqqani Network, and Laskhar-e-Tayyiba operating from Pakistan. Although localized in nature, the insurgency has maintained pressure on the International Security Assistance Force (ISAF) and the Afghan National Security Force (ANSF) through the use of improvised explosive devices (IEDs), infiltration and co-option, intimidation, assassinations, and high profile attacks in major population areas, such as Kabul. Entrenched criminal networks maintain freedom of movement throughout the country.

Civilian authorities generally maintained control over the security forces in Afghanistan, although there were instances in which security forces acted independently and sometimes committed human rights abuses in 2012 and 2013. The most significant human rights problems were torture and abuse of detainees; increased targeted violence and endemic societal discrimination against women and girls; widespread violence, including armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; and pervasive official corruption. Other human rights problems included extrajudicial killings by security forces; poor prison conditions; ineffective government investigations of abuses and torture by local security forces; arbitrary arrest and detention, including of women accused of so-called moral crimes; prolonged pretrial detention; judicial corruption and ineffectiveness; violations of privacy rights; restrictions on freedom of speech and press; restrictions on freedom of religion; limits on freedom of movement; underage and forced marriages; abuse of children, including sexual abuse; discrimination and abuses against ethnic minorities; trafficking in persons; discrimination against persons with disabilities; societal discrimination based on race, religion, gender, sexual orientation, and HIV/AIDS status; abuse of worker rights; and sex and labor trafficking.

Widespread disregard for the rule of law and official impunity for those who committed human rights abuses were serious problems. The government did not prosecute abuses by officials consistently or effectively. The Taliban and other insurgents continued to kill civilians and security force personnel using improvised explosive devices, car bombs, and suicide attacks. The Taliban used children as suicide bombers. Antigovernment elements also threatened, robbed, and attacked villagers, foreigners, civil servants, and medical and nongovernmental organization (NGO) workers.

As of February 20, 2014, the U.S. State Department continues to warn U.S. citizens against traveling to Afghanistan in light of its volatile security situation. No region in Afghanistan is considered immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other foreign nationals at any time. Remnants of the former Taliban regime and members of other terrorist organizations hostile to the government of Afghanistan and foreign nationals remain active in every province of the country. Travel to all areas of the country is unsafe due to ongoing military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of insurgent attacks using vehicle-borne or other IEDs. In September 2013, suicide bombers conducted a sophisticated, multiple-explosives and small-arms assault against the U.S. Consulate in

Herat, killing a number of guards. In early February 2014, a lone vehicle-borne IED detonated in close proximity to a U.S. security convoy, killing three civilian contractors. Kabul remains at high risk for militant attacks, including vehicle-borne IEDs, direct and indirect-fire attacks, and suicide bombings. In January 2014, suicide bombers and gunmen attacked a restaurant frequented by foreign nationals in an area of Kabul situated near many foreign missions, the U.S. Embassy, and the ISAF's headquarters. Proximity to or presence in areas and facilities under coalition force or U.S. government control is no guarantee of safety. All locations outside the U.S. Embassy and other U.S. government facilities are off limits to Embassy personnel unless there is a compelling government interest in permitting the travel that outweighs the serious risk.

U.S. citizens, who are also Afghan nationals, do not require visas for entry into Afghanistan. For U.S. passport holders born in Afghanistan (listed as place of birth on the passport), a visa is not required for entry. The Afghan embassy issues a letter confirming the nationality of an Afghan citizen for entry into that country.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B—Foreign Influence

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

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

Applicant’s sister and her family are Afghan citizens, who reside on the family’s property in Afghanistan. The DOHA Appeal Board has held that 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 (App. Bd. Feb. 15, 2006). Applicant has ties of affection and obligation to his sister and her family, as evidenced by his ongoing contact with his sister, her husband, and their high school-age son by telephone; Applicant’s efforts to intervene on his sister’s behalf with the local elders in Afghanistan in 2005; his financial support for his sister, when necessary; and his visits to see his sister and her family. Applicant traveled to Afghanistan to see them in January 2000; in May 2005 with nephew #1; in November 2005; and in November 2006. He lived with his sister and mother in Afghanistan from February 2008 to November 2008. During a trip to Afghanistan from December 2009 to March 2010, he

accompanied another nephew (nephew #2, who was still in Afghanistan as of September 2011) to the U.S. Embassy in Pakistan to help his nephew acquire a visa.¹¹

Foreign contacts or connections present a security concern if there is a heightened risk of foreign influence. Two disqualifying conditions are potentially applicable under AG ¶ 7:

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

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. Even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "the United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 (App. Bd. Dec. 7, 2006).

Applicant's personal relationship and contacts with his sister and her family in Afghanistan are of the type and frequency that one would expect of any immigrant with a sibling in a foreign country. There is no evidence that Applicant's sister or her spouse had any contact with governmental, military, or terrorist groups in their native Afghanistan, or when they lived in Pakistan. Nor is there any evidence that his sister and her family's daily activities are likely to present the conflict of interest addressed in AG ¶ 7(b). Applicant credibly asserts that he is not financially or emotionally invested in

¹¹ Applicant listed his family home in Afghanistan as his place of residency from December 2009 to March 2010. (GE 1.) Applicant's return to Afghanistan from Pakistan in February 2010 would have been his only entry into Afghanistan in 2010. Footnote 19 in the FORM is inaccurate to the extent that it indicates Applicant made two trips to Afghanistan in 2010.

the family home in Afghanistan. His sister works the land for her livelihood, and Applicant does not intend to interfere in her affairs.

However, a heightened risk is established under AG ¶ 7(a) and AG ¶ 7(b). Extremist groups have continued to stage indiscriminate attacks in Afghanistan against civilians, foreign and domestic, as well as against the INSF and the ANSF, with some increased frequency against the ANSF and Afghan National Police as they assume greater control over security for their own nation. As of February 20, 2014, the U.S. State Department continues to warn U.S. citizens against traveling to Afghanistan in light of its volatile security situation. No region in Afghanistan is considered immune from violence. The fraudulent attempt to deprive Applicant's sister of her home illustrates the shortcomings of local governance to address abuses, and it shows his sister's vulnerability. Apparently, illegal titles had been submitted and accepted by local authorities, who demanded large sums of money to return their land.

The ongoing risk of terrorist activity throughout Afghanistan precludes mitigation under AG ¶ 8(a):

(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.

AG ¶ 8(b) provides for possible mitigation of the conflict of interest risk where there is minimal foreign loyalty or where there are deep and longstanding ties to the United States:

(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.

It is difficult for Applicant to satisfy the first prong of AG ¶ 8(b). Applicant's family ties are understandable, but they are not "so minimal." He has visited his sister and her family in Pakistan and more recently in Afghanistan. He brought his mother to see his sister in Afghanistan in November 2005, and his mother stayed there until Applicant brought her back to the United States in March 2010. Applicant stayed with his family in Afghanistan from February 2008 to November 2008. He spent another 90 days in Afghanistan between December 2009 and March 2010, even though his spouse was a relatively recent immigrant to the United States at the time. Applicant currently telephones his sister once every two to three months, and when he calls, he also speaks to his brother-in-law and to his nephew. As noted in the FORM, the DOHA Appeal Board has long recognized a rebuttable presumption that contacts with family

members are not casual.¹² Applicant has not rebutted that presumption in light of his contacts, visits, financial support, and efforts to regain control of the family property for his sister. AG ¶ 8(c), “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation,” applies, if at all, only to his relationship with his married niece, with whom he has no contact. However, there is the indirect risk of undue foreign influence because of his sister’s relationship with her daughter.

AG ¶ 8(b) could be implicated in that Applicant asserts “such a deep and longstanding loyalty to the U.S. that [he] would always think of the interests of [his] wife and son as the same as the interests of the United States.” (AE A.). Applicant came to the United States as a refugee at age 27. Available information does not reveal how he spent his first two years in the United States. In August 1993, he began working as an auto body technician. Around December 1998, he bought a home in the United States, although he later lost the home for failure to pay the mortgage. In late January 1999, he became a U.S. citizen, and shortly thereafter, he obtained his U.S. passport. His voluntary acquisition of U.S. citizenship is a very significant tie to the United States. Yet, when he lost his home around February 2008, he resigned from his job and went to Afghanistan for 10 months. There is no evidence of any involvement by Applicant in any local community, sports, religious, fraternal, or educational organizations in the United States. Presumably, Applicant sponsored his spouse’s immigration to the United States in 2008, although he responded “No” on his September 2011 e-QIP to whether he had sponsored any foreign citizen to come to the United States as a student, for work, or for permanent residence in the last seven years.

Applicant’s work as a linguist in Afghanistan since October 2011 weighs in his favor when assessing whether he can be counted on to act in the interests of the United States. The DOHA Appeal Board has recognized that individuals who serve in combat zones should be evaluated in the context of the high-risk environment in which they work:

As a general rule, an applicant’s prior history of complying with security procedures and regulations is considered to be of relatively low probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant’s more immediate disqualifying conduct or circumstances. However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of high-risk circumstances in which the applicant has made a significant contribution to the national security. The presence of such circumstances can give credibility to an applicant’s assertion that he can be relied on to recognize, resist, and report a foreign power’s attempts at coercion or exploitation.

¹² See e.g., ISCR Case No. 00-0484 (App. Bd. Feb. 1, 2002); ISCR Case No. 02-27076 (App. Bd. May 16, 2005); ISCR Case No. 04-08870 (App. Bd. Nov. 29, 2006); and ISCR 11-01888 (App. Bd. Jun. 1, 2012).

See ISCR Case No. 06-25928 at 4 (App. Bd. Apr. 9, 2008) (internal citations omitted). Applicant indicated in response to the FORM that he has been recognized for outstanding performance in support of security and medical operations at his facility in Afghanistan, and that he applied for a “higher level of security clearance” at the request of his supervisors. Applicant presented no independent evidence confirming the quality or extent of his contributions to the U.S. military, although presumably, if his work had been unacceptable, he would have been removed from his position as a linguist.

Although Applicant’s service for the United States in Afghanistan tends to minimize the risk that he may be motivated to assist Afghanistan or any extremists, there is an unacceptable risk that he could find himself in the position of having to make an untenable choice between the interests of a close family member and the United States. Applicant exhibited concern for his sister, and a willingness to intervene in what he described as “a difficult situation” involving the family property, in order to ensure justice for his family. It apparently took four visits to convince the local elders of the fraudulent nature of the land seizure. Applicant’s posting in Afghanistan increases the risk of undue foreign influence in that he could be targeted personally or through his sister and her family.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).¹³ Applicant has family ties to Afghanistan that heighten the risk of foreign influence. Afghanistan has been mired in conflict for decades, and the country is under constant threat of violence from terrorist and extremist groups wanting to sabotage the country’s efforts to establish a stable, functioning democracy. With the help of the United States and ISAF, the country has made sufficient strides for the United States to turn over primary security to the Afghans in late 2014. Nonetheless, the risk of undue foreign influence is very real.

Guideline B cases are not about Applicant’s loyalty. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), “Application of the guidelines is not a comment on an applicant’s patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member.” Given the circumstances noted

¹³ The factors under AG ¶ 2(a) are as follows:

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

above, I am unable to find it clearly consistent with the national interest to grant or continue a security clearance to Applicant at this time.

Formal Findings

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

| | |
|---------------------------|-------------------|
| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge