



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00771

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2014

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s parents and parents-in-law are deceased. Applicant, who wishes to become a linguist in Afghanistan, immigrated to the United States in 1990. Applicant has not traveled to Pakistan or Afghanistan in more than 10 years. His spouse and six children are U.S. citizens, and five of them are U.S. residents. 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 Pakistan or Afghanistan in favor of the U.S. interest. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On September 4 and 13, 2011, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 4) On September 20, 2013, the Department of Defense (DOD) 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 October 28, 2013, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 3) A complete copy of the file of relevant material (FORM), dated November 22, 2013, was provided to him on December 14, 2013.¹ Applicant did not respond to the FORM. The case was assigned to me on February 3, 2014.

Procedural Ruling

Department Counsel requested administrative notice (AN) of facts concerning Afghanistan and Pakistan. (FORM at 2) Department Counsel provided supporting documents to show detail and context for those facts. (AN Request) 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). There was no objection about the accuracy of the AN materials, 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 Fact²

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a to 1.d. (HE 3) He partially admitted the allegation in SOR ¶ 1.e, and he provided mitigating information. (HE 3) 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 62 years old, and he seeks employment as a linguist.³ He was born in Afghanistan. He attended school through high school in Afghanistan. From 1992 to

¹The DOHA transmittal letter is dated November 26, 2013, and Applicant's receipt is dated December 14, 2013. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

1993, he attended training and received a certificate for auto-body training. He attended college for four months in the United States in 2011.

Around 1972, Applicant was drafted into the Afghanistan Security Forces where he served for one year. In 1977, Applicant married in Afghanistan. His spouse was born in Afghanistan. In 1979 and 1981, two of his children were born in Afghanistan, and in 1985, 1988, and 1990, three of his children were born in Pakistan.

In 1980, when Applicant was a citizen and resident of Afghanistan, he collected funds from a few people to support an entity that was part of the Mujhadeen.⁴ (SOR ¶ 1.e) The funds were supposed to be used to purchase clothing and food for those fighting against the communist regime in Afghanistan and to fight the Russian troops in Afghanistan. In 2005, he stated that he does not associate with members of the entity.

In 1981, Applicant left Afghanistan and moved to Pakistan.⁵ In 1990, Applicant moved to the United States. In 1993, one of Applicant's children was born in the United States. All of Applicant's children are now U.S. citizens. One son lives in the Caribbean while attending a post-graduate school, and his other five children live in the United States. He maintains frequent contact with his children. In 1996, Applicant became a naturalized U.S. citizen.

Applicant has six siblings living in Afghanistan and Pakistan, one brother living in Germany, and one brother living in the United States. Two of his brothers were drafted into the Afghan army and served in the Afghan Army for one year in the 1960s or 1970s.⁶ He traveled to Pakistan and met his siblings from Pakistan and Afghanistan from about July through August 1998, February through April 2002, and January through February 2003.

Applicant's brother and three sisters are citizens and residents of Afghanistan. (SOR ¶¶ 1.a and 1.b) His brother is a retired engineer, and his three sisters are housewives. One brother-in-law is deceased; one brother-in-law is a tailor; and the occupation of the other brother-in-law is unknown.

One of Applicant's brothers and one sister are residents of Pakistan. (SOR ¶ 1.c) His brother and his brother-in-law are physicians.

³Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's SF 86 or Office of Personnel Management (OPM) personal subject interview (PSI). (Items 4, 9)

⁴ The sources for the information in this paragraph are Items 1, 3-9 and FORM at 3-4.

⁵Unless stated otherwise, the source for the information in this paragraph and the next three paragraphs is Applicant's May 31, 2011, Office of Personnel Management (OPM) personal subject interview (PSI). (Item 9)

⁶The sources for the information in this paragraph and the next two paragraphs are Items 1, 3-9 and FORM at 4.

Applicant contacts his siblings living in Afghanistan and Pakistan every four months or less frequently. (Item 9) The exception is one sister living in Afghanistan with whom he communicates six times each year. (Item 9)

Applicant's father was employed by the Afghanistan Government as a clerk from 1959 to 1964. (SOR ¶ 1.d; Items 1, 3-9) Applicant's parents and parents-in-law are deceased. (Item 4)

Applicant acknowledged the dangerous conditions in Pakistan and Afghanistan for himself and his relatives if he worked as a linguist for the United States. (Item 9) It could be dangerous for Applicant to leave the compound where U.S. forces are providing security. (Item 9)

Applicant does not have any reportable arrests, convictions, or derogatory financial information. (Item 4) He does not abuse alcohol or illegal drugs. (Item 4) Applicant emphasized that he is loyal to the United States. (Item 9)

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.

Pakistan

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

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

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Pakistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghanistan-Pakistan border. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to al Qaida and a number of foreign and Pakistan-based extremist groups. Al Qaida exploits the permissive operating environment to support the Afghanistan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Pakistan Taliban and other extremists groups, Al Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies. Al Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistan civilians and security force personnel.

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

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

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

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

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

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th 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 two 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; 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.

Applicant was born and educated in Afghanistan. Around 1972, he was drafted into the Afghanistan Security Forces where he served for one year. In 1977, Applicant married in Afghanistan. His spouse was born in Afghanistan. Two of his children were born in Afghanistan, and three of his children were born in Pakistan.

In 1980, when Applicant was a citizen and resident of Afghanistan, he collected funds from a few people to support an entity that was part of the Mujhadeen. The funds were intended to support an entity fighting against the communist regime in Afghanistan. The Applicant was a citizen and resident of Afghanistan at the time he

aided the resistance to the Soviet Union's invasion of Afghanistan. His assistance to the entity does not raise a security concern.

In 1981, Applicant left Afghanistan and moved to Pakistan. In 1990, Applicant moved from Pakistan to the United States. He traveled to Pakistan and met his siblings in 1998, 2002, and 2003. Applicant has six siblings living in Afghanistan and Pakistan, and he communicates frequently with one of his siblings living in Afghanistan.

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 Pakistan and Afghanistan to obtain classified information from Applicant could result in a security concern. The content of Applicant's communications with his siblings living in Pakistan and Afghanistan are not fully described in the record, and Applicant failed to establish his communications were casual. He frequently communicates (six times a year) with his sister living in Afghanistan. His ongoing communications over the years with siblings living in Afghanistan and Pakistan are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." His relationships with his siblings living in Afghanistan and Pakistan create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help siblings living in Afghanistan and Pakistan. For example, if terrorists in Afghanistan or Pakistan 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 Pakistan or 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 Pakistan and 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 Pakistan and Afghanistan, which are dangerous countries 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 Pakistan or Afghanistan seek or have sought classified or economic information from or through Applicant, his spouse, his in-laws, or his siblings living in those countries, 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 Pakistan and Afghanistan have a significant problem with terrorism. Applicant’s relationships with family members living in Pakistan and 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. Department Counsel produced substantial evidence of Applicant’s siblings living in Pakistan and Afghanistan. Department Counsel has established AG ¶¶ 7(a) and 7(b) and raised the issue of potential foreign pressure or attempted exploitation, 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.

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 frequent contact with his sister living in Afghanistan and less frequent contact with his other siblings living in Pakistan and Afghanistan. His loyalty and connections to his family living in Pakistan and 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 Pakistan and 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. In 1990, Applicant and his spouse moved to the United States. All six of Applicant's children are now U.S. citizens. One son lives in the Caribbean while attending a post-graduate school, and his other five children live in the United States. He maintains close relationships with his spouse and children and frequently communicates with them. He is now 62 years old. When Applicant took an oath and swore allegiance to the United States in 1996, as part of his naturalization as a U.S. citizen, and 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 Pakistan and Afghanistan. He frequently communicates with his sister living in Afghanistan and less frequently with other siblings living in Pakistan and Afghanistan. There is no evidence, however, that terrorists, criminals, the Pakistan or Afghanistan Governments, or those conducting espionage have approached or threatened Applicant, his spouse, or their family to coerce Applicant for classified or sensitive information.⁷ As such, there is a reduced possibility that Applicant or his spouse's family living in Pakistan or Afghanistan would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his family living in Pakistan and Afghanistan is from terrorists and other lawless elements and not the Pakistan or 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 Pakistan and Afghanistan. Applicant's family in Pakistan and 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 Pakistan and 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 Pakistan or Afghanistan. Applicant is not required to report his contacts with citizens or residents of Pakistan or Afghanistan.

AG ¶ 8(f) has limited application because it is only available to mitigate security concerns arising under AG ¶ 7(e).⁸ Applicant does not have investments in Pakistan or Afghanistan.

In sum, Applicant's connections to his siblings living in Pakistan and Afghanistan are significant. He is close to his siblings and continues to communicate with them even though he has not been to Pakistan or Afghanistan in more than 10 years. Applicant's connections to the United States are strong. His spouse and six children are all U.S. citizens. His spouse and five children are currently living in the United States. His connections to the United States are heavily outweigh his connections to his family in Pakistan and 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 Pakistan or Afghanistan in favor of the U.S. interest. Foreign influence security concerns are mitigated under Guideline B. Even if security

⁷There 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.

⁸AG ¶ 7(e) reads, "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."

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 Pakistan and Afghanistan. Even though he has not visited Afghanistan or Pakistan in more than 10 years, he maintains contacts with his siblings. His connections to his family in Pakistan and 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 Pakistan and Afghanistan must take into consideration the geopolitical situation and dangers there.⁹ Those countries are dangerous places because of violence from terrorists and other lawless elements. Terrorists continue to threaten the Pakistan and Afghanistan Government, the interests of the United States, and those who cooperate and assist the United States. The Afghanistan and Pakistan Governments do not fully comply with the rule of law or protect civil liberties in many instances. The United States, Pakistan, and Afghanistan Governments are allies in the war on terrorism. Pakistan, Afghanistan, and the United States have close relationships in diplomacy and trade. Pakistan, Afghanistan, and the United States occasionally have profound policy disputes.

⁹ 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).

Applicant's connections to the United States warrant greater weight than his connections to his siblings living in Pakistan and Afghanistan. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or 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 six children are U.S. citizens, and all of them reside in the United States, except for his oldest son. 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 Pakistan and 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.e: For Applicant

Conclusion

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

Mark Harvey
Administrative Judge