



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-01135

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

07/18/2014

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns covering foreign preference and foreign influence. Eligibility for access to classified information is granted.

Statement of Case

On December 6, 2013, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) detailing reasons why the DOD could not make the affirmative determination of eligibility for granting a security clearance, and the DoD CAF recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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 (AGs) implemented by the DoD on September 1, 2006.

Applicant responded to the SOR on January 3, 2014, and requested a hearing. The case was assigned to me on March 31, 2014, and was scheduled for hearing on April 22, 2014. The hearing was convened on that date. At hearing, the Government's case consisted of three exhibits (GEs 1-3). Applicant relied on two witnesses (including himself) and three exhibits (AEs A-C). The transcript (Tr.) was received on May 7, 2014.

Besides its three exhibits, the Government requested administrative notice of certain facts with respect to the Islamic Republic of Afghanistan (Afghanistan). It cited six source documents, all official U.S. Government publications, pertaining to Afghanistan: *Afghanistan: Post-Taliban Governance, Security and U.S. Policy*, CRS Report for Congress (October 2013); *Unclassified Report on Progress Toward Security and Stability in Afghanistan*, U.S. Department of Defense (November 2013); *Country Reports on Terrorism 2012, Chapter 2-Country Reports: South and Central Asia*, U.S. Department of State (May 2013); *Country Reports on Human Rights Practices for 2012: Afghanistan*, U.S. Department of State (undated); *Travel Warning: Afghanistan*, U.S. Department of State (August 2013); and *Country Specific Information: Afghanistan*, U.S. Department of State (August 2013).

Administrative notice is the appropriate type of notice used for administrative proceedings. Administrative notice is appropriate for noticing facts or government reports that are well known. *Cf. Stein*, Administrative Law, Section 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the identified background reports addressing the geopolitical situation in Afghanistan, in accordance with the provisions of Rule 201 of the Federal Rules of Evidence.

Procedural Issues

Before the close of the hearing, Applicant requested leave to supplement the record to document endorsements. For good cause shown, Applicant was granted seven days to supplement the record; Department Counsel was afforded three days to respond. Within the time permitted, Applicant submitted two endorsements from members of his command. Applicant's submissions were received without objection, and were admitted together as AE D.

Prior to the close of the record, Department Counsel moved to amend subparagraph 1.a of the SOR to allege Appellant's sister now resides in Afghanistan. (Tr. 83) Department Counsel's amendment request is consistent with the presented evidence in the record, was not objected to by Applicant, and was accepted. (Tr. 83-84) With the approved amendment to subparagraph 1.a of the SOR, Applicant admitted the allegation, as amended, in its entirety. (Tr. 83-84)

Applicant, in turn, moved to amend his response to subparagraph 1.b of the SOR to substitute an admission for his mistaken denial to the allegation. (Tr. 87-88) Applicant's amendment request was not objected to by Department Counsel and was accepted. The amendment conforms to the explanations in Applicant's response.

Summary of Pleadings

Under Guideline C, Applicant allegedly exercised dual citizenship with Afghanistan and the United States by possessing an Afghani passport issued to him in June 2011 and not scheduled to expire before June 2016.

Under Guideline B, Applicant allegedly has a sister who is a citizen of Afghanistan residing in Tajikistan, and an aunt who is a citizen and resident of Afghanistan.

In his response to the SOR, Applicant admitted most of the allegations, but denied that his aunt is a citizen and resident of Afghanistan. In his explanations, he claimed his sister returned to Afghanistan to reside after leaving the country for a better life and education for her children in Tajikistan. He claimed she did not find the living conditions in Tajikistan to be suitable for her and her family, and moved back to Afghanistan in June 2013. Applicant claimed his aunt was born and raised in Afghanistan and still resides in the country with her family. He confirmed she does not have dual citizenship and never lived anywhere else outside of Afghanistan. Applicant explained his application for an Afghan passport before he became a U.S. citizen.

Findings of Fact

Applicant is a 31-year-old linguist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born and raised in Afghanistan and immigrated to the United States in April 2005. He became a naturalized U.S. citizen in February 2012 and continues to be a dual U.S.-Afghanistan citizen. (GEs 1 and 2) In 1996, Applicant's father was killed by members of the Taliban over a monetary dispute. (GEs 1-3; Tr. 40, 79, 94) Two years later, his mother was assaulted by members of the Taliban for failing to wear a burkha when she attended a local bazaar. Before immigrating to the United States in 2005, Applicant moved his family to Russia with the intent of becoming refugees of the country. (GEs 1 and 2; Tr. 99-100) He resided in Russia for about seven years (i.e., between 1999 and 2005) before immigrating to the United States. (GE 2) Currently, his mother, three sisters, and a brother reside in the United States. (Tr. 98) Another brother resides in Germany. (GEs 1-3; Tr. 106)

Applicant was issued a U.S. passport in March 2012. (GEs 1 and 2) He obtained an Afghan passport in December 2004 that was renewed in June 2011. (GE 3) He earned a bachelor's degree in criminal justice from an accredited U.S. academic institution in December 2012. (Tr. 128-129) Applicant has never been married and has no children. He never served in the Afghan military, worked for the Afghan government, nor voted in an Afghan election. (GE 2)

In June 2013, Applicant announced in his completed affidavit that he had surrendered his Afghan passport to his employer's Facility Clearance Officer (FSO) or Contractor Special Security Officer (CSSO), with the understanding his FSO would destroy the Afghan passport and retain Applicant's original affidavit. (AE A; Tr. 43) He surrendered his Afghan passport as he promised. (Tr. 49-50)

Applicant confirmed his understanding he would not seek to obtain a replacement passport, new or otherwise, without first notifying his employer. (AE A) He expressed his intent to renounce his Afghanistan citizenship. (GE 2; Tr. 46-49) Applicant has a sister and an aunt who are citizens and residents of Afghanistan. (GEs 2 and 3; Tr. 78-79, 85-86)

Prior to June 2013, his sister resided in Tajikistan in refugee status. (Tr. 82, 86) She has since returned to Afghanistan to live and work as a teacher and raise her children. (Tr. 82-83) Applicant has not made physical contact with his sister since 1994. (Tr. 112)

Applicant last visited Afghanistan for non-military purposes in June 2012. On this trip, he visited both his mother (before her immigration to the United States) and his aunt. (GEs 1-3; Tr. 113-114) He maintains periodic contact with his sister and aunt, but provides no financial support. (GEs 1-3; Tr. 112-114) The only financial support he provided to either relative was money (\$200) he wired his sister via Western Union in 2012 to help her with the six children she is responsible for. (GE 2; Tr. 77-80, 85-93, 106-111)

To the best of Applicant's knowledge, neither his sister nor his aunt have any relationship or affiliation with the Afghan government. Neither Applicant nor any of his relatives residing in Afghanistan have any known business or property interests in Afghanistan. And Applicant has no plans to relocate to Afghanistan in the foreseeable future. (GEs 2 and 3)

When asked about Applicant's sister and aunt, Applicant's brother corroborated Applicant's accounts of having little contact with their sister and aunt in Afghanistan. (Tr. 119-121) His brother confirmed that Applicant and most of their family immigrated to the United States from Russia in 2005 and acquired U.S. citizenship. (Tr. 121-128)

Since obtaining his U.S. passport in March 2012, Applicant uses only his U.S. passport when he travels abroad. (Tr. 78, 86-91, 94) He last traveled to Afghanistan for non-military purposes in June 2012 and used his U.S. passport. (GEs 1-3)

Between 2007 and May 2013, Applicant traveled to Afghanistan for military-related purposes on 57 different occasions as a cultural advisor. (GE 2; Tr. 95-96) The last trip abroad he made for non-military purposes was in 2013 when he traveled to Germany on his U.S. passport. (Tr. 94) Applicant's loyalties extend only to the United States, his adopted country. Currently, he exercises no Afghan privileges. (Tr. 92)

Endorsements

Applicant is well regarded in his work as an Army linguist in Afghanistan supporting U.S. combat operations. (AE D) During his recent tours between 2008 and 2010, he earned numerous certificates of achievement and appreciation and a team coin recognizing his service work. (AEs A and B)

Country information on Afghanistan

Afghanistan is a country in Southwestern Asia. It is sometimes referred to as the crossroads of Central Asia. Since the British relinquished control of Afghanistan in August 1919, Afghanistan has been an independent state. Between 1919 and 1973, Afghanistan moved away from its longstanding isolation under a succession of Muslim rulers: King Amanullah (1919-1929), Nadir Khan (1929-1933), and Mohammad Zahir Shah (Nadir Khan's 19-year-old son), who ruled Afghanistan for over 40 years (1933-1973). See *Background Note: Afghanistan*, at 1-2, U.S. Department of State (November 2011).

Prime minister Sardar Mohammad Daoud (between 1953 and 1963) mounted a military coup in 1973 and seized power amid charges of corruption and malfeasance against Zahir Shah and his royal family. (*Background Note: Afghanistan, supra*, at 2) Daoud proceeded to abolish the monarchy, abrogate the constitution, and declare Afghanistan a republic. His economic and social reforms contributed little, however, to stabilizing political conditions in the country.

Following a Soviet-supported overthrow and assassination of Daoud in April 1978, a Marxist government was formed with the backing of the Soviets. See *Background Note: Afghanistan, supra*; *Country Specific Information: Afghanistan, supra*. Sur Muhammad Taraki was installed as the country's president of the revolutionary council. Opposition to the Taraki government increased as many of members of Afghan elites, religious establishments, and intelligentsia were imprisoned, tortured, or murdered. A revolt against the Marxist government occurred in the summer of 1978 and quickly spread into a countrywide insurgency. (*Background Note: Afghanistan, supra*, at 3)

Soviet invasion

Seeking to take advantage of the unrest following the April 1978 coup, the Soviet Union quickly signed a bilateral treaty of friendship and cooperation with the new Afghan regime and increased its military assistance to the regime. See *Background Note: Afghanistan, supra*; *Country Specific Information: Afghanistan, supra*. Faced with a deteriorating security situation, the Soviets invaded Afghanistan in December 1979, killed the Afghan ruler, and, backed by 120,000 Soviet troops, installed Babrak Karmal (an exiled leader of the Parcham faction) as the country's prime minister. (*Background Note: Afghanistan, supra*)

Afghan freedom fighters (*mujahideen*) who opposed the Karmal communist regime, armed with increased weapons and training assistance from the U.S. and its allies, collaborated with other Pesawar-based guerilla groups in the 1980s to destabilize the Karmal regime. See *Country Specific Information: Afghanistan, supra*. The resistance movement eventually led to an agreement known as the Geneva Accords (signed by the front-line states of Pakistan and Afghanistan, the United States, and the Soviet Union). The agreement served to ensure that Soviet forces withdrew from the country in accordance with their expressed commitments in February 1989. (*Id.*)

Ascendency of the Taliban

By the mid-1990s, the Taliban had risen to power in reaction to the anarchy and increase of warlords in the aftermath of the withdrawal of Soviet forces. (*Background Note: Afghanistan, supra*, at 3-4) Many of the Taliban had been educated in *madrassas* in Pakistan with roots in rural Pashtun areas of the country. See *Country Specific Information: Afghanistan, supra* Beginning with its capture of Kandahar in 1994, the Taliban mounted an aggressive expansion of its control throughout Afghanistan. By the end of 1998, its forces occupied almost 90 percent of the country, and reduced its opposition largely to a small sections of the northeast and the Panjshir valley. (*id.*)

Bolstered by its imposition of an extreme interpretation of Islam on the entire country, the Taliban committed massive human rights violations (particularly directed at women and children), and committed serious atrocities against minority populations. See *Background Note: Afghanistan, supra*, at 4. From the mid-1990s, the Taliban provided sanctuary to Osama bin Laden, and provided a base of operations for his and other terrorist organizations. (*Country Specific Information: Afghanistan, supra*) Bin Laden and his Al-Qaida group are known to have provided financial and political support to the Taliban, and acknowledged their responsibility for the September 11, 2001 terrorist attacks against the United States. (*id.*)

Beginning in October 2001 (following the Taliban's refusal to expel bin Laden), the United States and its coalition partners initiated a military campaign, targeting terrorist facilities and Taliban military and political assets within Afghanistan. U.S. military and anti-Taliban forces routed the Taliban and caused their rapid disintegration. After the fall of Kabul in November 2001, a UN-sponsored conference was created to restore stability and governance in Afghanistan. See *Country Specific Information: Afghanistan, supra*. From this conference emerged a Transitional Authority headed by President Hamid Karzai. This authority (renamed the Transitional Islamic State of Afghanistan) was charged with the responsibility of drafting a constitution. (*id.*)

While the core insurgent faction in Afghanistan remains the Taliban movement, other militant factions present security challenges to the United States and the allied government of Afghanistan. One militant faction cited by U.S. officials as a particularly potent threat to Afghan security is the "Haqqani Network," which the Administration reported to Congress in September 2012 as an organization that meets the criteria for FTO [Foreign Terrorist Organization] designation. See *Afghanistan: Post-Taliban Governance, Security and U.S. Policy, supra*, at 15-17; *Administrative Notice, supra*, at

2) Other groups designated by the Administration as FTOs include a Pakistani group, known as the Pakistani Taliban, that supports the Afghan Taliban from both sides of the Afghan-Pakistani border and another Pakistani group known as the Lakshar-e-Taryyiba (LET) that is increasingly active inside Afghanistan. (*id.*)

A new constitution was drafted and ratified by a constitutional loyal *jirga* on January 4, 2004. See *Background Note: Afghanistan, supra*, at 4-5; *Country Specific Information: Afghanistan, supra*. The Afghan constitution provides for indirect election of the National Assembly's upper house by the provincial councils and by reserved presidential appointments. On December 4, 2004, the country was renamed the Islamic Republic of Afghanistan. (*id.*) Hamid Karzai was sworn in as Afghanistan's President on December 7, 2004. (*id.*) He presided over the new government's first convened parliament in late 2005.

Presidential and provincial elections in Afghanistan for 2010 were coordinated by the Afghanistan Independent Election Commission (IEC), with assistance from the UN. *Id.* Challenged presidential election results in 2010 have not been widely disseminated. See *Country Specific Information: Afghanistan, supra*.

Political conditions in Afghanistan

A new democratic government assumed control of Afghanistan in 2004 following a popular election. See *Background Note: Afghanistan, supra*. While the national government has continued to expand its authority, it has been hampered in its ability to deliver necessary social services and remains dependent on U.S.-led assistance. See *Unclassified Report on Progress Toward Security and Stability in Afghanistan, supra*. With its international community support at work, its ability to secure its borders and maintain internal order is increasing. Although the Taliban-led insurgency in Afghanistan has lost ground in some areas, it remains resilient and capable of challenging U.S. and NATO goals. See *Country Specific Information: Afghanistan, supra*.

International terrorists, fueled by Taliban and Al Qaida support, continue to assert power and intimidation within the country. See *Afghanistan: Post-Taliban Governance, Security and U.S. Policy, supra*, at 13-14. Safety and security remain key concerns because these terrorist organizations continue to target U.S. and Afghan interests by suicide operations, bombings, assassinations, car-jackings, assaults, and hostage-taking. See *Country Reports on Terrorism 2010, supra*, at 9-10; *Country Specific Information, Afghanistan, supra*, at 2-3. Risks of terrorist activity remain extremely high at the present time. See *Administrative Notice, supra*, at 2-4

Human rights conditions in Afghanistan remain poor by all reported accounts. State Department reports confirm active insurgent activity in Afghanistan. See *Country Reports on Human Rights Practices for 2012: Afghanistan, supra*, at 1-3. No section of Afghanistan is safe or immune from violence. See *Travel Warnings, Afghanistan, supra*. Kabul, in particular, has experienced increased militant attacks in recent years, including rocket attacks, vehicle-borne IEDs, and suicide bombings. *Id.* Foreigners throughout the country continue to be targeted for violent attacks and kidnappings:

some motivated by terrorism, and others by common criminal activity. See *Country Specific Information: Afghanistan, supra*.

To date, Afghanistan has still not been able to build effective, honest, and loyal provincial and district institutions and lacks a coherent tribal engagement strategy for unifying the country. Besides being subject to Afghan laws, Afghan Americans may also be subject to other laws that impose special obligations on Afghan citizens. See *Country Specific Information: Afghanistan, supra*, at 6. U.S. citizens who are also Afghan nationals do not require visas for entry into Afghanistan. Likewise, for U.S. passport holders born in Afghanistan, a visa is not required for entry. For these individuals, the Embassy of Afghanistan issues a letter confirming nationality for entry into Afghanistan. (*id.*, at 2) The Afghan drug trade remains a major source of revenue for corrupt officials, the Taliban, and other insurgent groups who conduct operations in the country. See *id.* at 8-9; *Country Reports on Terrorism 2012, Chapter 2-Country Reports: South and Central Asia, supra*.

U.S.-Afghanistan relations

Since the fall of the Taliban, the United States has supported the creation of a broad-based government in Afghanistan, and has made a long-term commitment to help Afghanistan reconstitute and rebuild following years of war and unstable governments. See *U.S. Relations with Afghanistan*, at 1-2, U.S. Department of State (September 2013). At the July 2012 Tokyo Conference, the United States and other international partners committed to continue providing development assistance to Afghanistan through the 2014 transition and the ensuing transformational decade. (*id.*) Through the Tokyo Mutual Accountability framework, the United States and other international donors committed to providing Afghanistan \$16 billion in aid through 2015 and continuing assistance at levels commensurate with the last decade through 2017.

The United States and its coalition partners in the international community currently provide important humanitarian assistance, capacity-building, security protection, counter-narcotic programs, and infrastructure projects. The United States has also brought important political influence to bear on the establishment of durable democratic principles that promote the rule of law and encourage transparent and accountable forms of government. See *Country Specific Information: Afghanistan, supra*. Efforts are currently underway to improve Afghanistan's business climate (inclusive of measures designed to strengthen the country's regulatory and legal framework) to attract foreign trade and investment. (*U.S. Relations with Afghanistan, supra*)

The United States also supports the Afghanistan government's commitment to the protection of women's rights, human rights, and religious tolerance. (*U.S. Relations with Afghanistan, supra*) Educational advancements by 2009 reflect increased female enrollment of 37 per cent of the student population in Afghan schools and similar advances in the number of female teachers. (*Country Specific Information: Afghanistan, supra*)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering Defense Office of Hearings and Appeals (DOHA) cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2©

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a). AG ¶ 2(a) is intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: When an individual acts in such a way as to indicate preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. See AG ¶ 9.

Foreign Influence

The Concern: 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 the this Guideline can and should considered 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. See AG ¶ 6.

Burden of Proof

Under the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility.

"[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). And because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

Analysis

Applicant is a linguist for a U.S.-based defense contractor. He is an Afghan citizen by birth and a naturalized U.S. citizen. His mother and four of his siblings (three sisters and one brother) are naturalized U.S. citizens who reside in the United States. Trust concerns relate to foreign preference based on Applicant's past possession of an Afghan passport after becoming a U.S. citizen and obtaining a U.S. passport. Additional foreign influence trust concerns relate to Applicant's having a sister and an aunt who are citizens and residents of Afghanistan with whom he maintains little contact.

Foreign Preference

Preference concerns necessarily entail allegiance assessments and invite critical considerations of acts indicating a preference for the interests of the foreign country (Afghanistan) over the interests of the United States. By electing to retain his Afghan passport after becoming a naturalized U.S. citizen and obtaining his own U.S. passport, Applicant demonstrated some disposition for a split preference for Afghanistan and the United States.

Since obtaining a U.S. passport, Applicant has not used his Afghan passport for his travel privileges. His continued holding of his Afghan passport after obtaining a U.S. passport reflects some active indicia of Afghan preference. But Applicant has since surrendered his Afghan passport and expressed his willingness to renounce his Afghan citizenship.

Because Applicant elected to retain his Afghan citizenship and passport after he became a naturalized U.S. citizen with a U.S. passport, he acquired travel privileges not available to other U.S. citizens. The Government may apply certain provisions of disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, "exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This DC includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and

(7) voting in a foreign election.

Specifically, DC ¶ 10(a)(1) has some application to the established facts and circumstances herein. By retaining his Afghan passport, Applicant was potentially able to achieve travel privileges and conveniences not available to other U.S. citizens.

Still, Applicant has since surrendered his Afghan passport and expressed a willingness to renounce his Afghan citizenship. As a result, he no longer has any material privileges that can realistically create split preferences between Afghanistan and the United States. Several mitigating conditions apply to Applicant's situation: MC ¶ 11(a), "dual citizenship is based solely on parents' citizenship or birth in a foreign country;" MC ¶ 11(b); "the individual has expressed a willingness to renounce dual citizenship;" and MC ¶ 11(e), "the passport has been destroyed, surrendered, to the cognizant security authority, or otherwise invalidated."

Whole-person precepts are helpful to Applicant in surmounting the Government's preference concerns herein. The positive trust impressions he has forged with his military command corroborate his claims of undivided loyalty and preference for the United States.

Overall, Applicant is able to persuade that his current preference is solely with the United States. Because he made limited use of Afghan privileges associated with his retaining his Afghan passport and dual Afghan citizenship, he manifested some initial preference for Afghanistan under the criteria established by the Appeal Board. Applicant absolves himself, though, of foreign preference concerns associated with the presented issue of whether he retains a preference or split preference for his birth country (Afghanistan), or his adopted country (the United States). Favorable conclusions warrant with respect to the allegations covered by Guideline C.

Foreign Influence

Applicant's sister and aunt who are citizens and residents of Afghanistan have deep roots in Afghanistan, a country rich in history and socio/political traditions, constitutional government and institutional respect for human rights, intermixed with periodic reports of abuses by police and government authorities. Despite encouraging efforts in the development of strategic partnerships between Afghanistan and the U.S. in recent years, terrorist organizations continue to target U.S. and Afghan interests by suicide operations, bombings, assassinations, car-jackings, assaults, and hostage-taking. Human rights problems continue to plague law-enforcement efforts. And foreigners throughout the country continue to be targeted for violent attacks and kidnappings: some motivated by terrorism, and others by common criminal activity.

The Government urges security concerns over risks that Applicant's sister and aunt residing in Afghanistan might be subject to undue foreign influence by either Afghan government authorities or terrorist organizations linked to the Taliban and al Qaida to access classified information in Applicant's possession or control. Because

Applicant's two family members have Afghan citizenship by birth and reside in Afghanistan, they present potential heightened security risks covered by disqualifying condition DC ¶ 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," The citizenship/residence status of these family members in Afghanistan pose some potential concerns for Applicant because of the risks of undue foreign influence that could potentially impact the privacy interests subject to Applicant's control.

Because neither of Applicant's two family members residing in Afghanistan have any identified Afghan government or military service affiliation, no consideration of DC ¶ 7(b), "connection 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," or DC ¶ 7(d), "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion," have any application to Applicant's situation. Neither Applicant's sister nor aunt residing in Afghanistan have any history of being subjected to any coercion or influence, or appear to be vulnerable to the same at the hands of Afghan government or military authorities. While Applicant's family members are at potential risk to terrorist attacks for so long as they reside in Afghanistan, they know nothing about Applicant's linguist work that could be exploited by known terrorist organizations operating in Afghanistan.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. The AGs take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter. The AGs also take into account the applicant's demonstrated loyalty and willingness to assume heavy risks associated with assisting the Army's combat operations in a war zone.

While the reports of terrorism and human rights abuses in Afghanistan are a matter of some security concern to the United States, Afghanistan's emergent status as a strategic partner of the United States in its continuing war against terrorism is an important political development that serves to promote political solidarity, and reduce security risks and concerns between the two allied governments.

Based on his case-specific circumstances, MC ¶ 8(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 United States, that the individual can

be expected to resolve any conflict of interest in favor of the U.S. interest,” is available to Applicant. Applicant’s demonstrated loyalty and professional commitments to the United States are well demonstrated and sufficient under these circumstances to neutralize any potential conflicts that are related to his relationships with his immediate and extended family. MC ¶ 8(c), “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation,” has some applicability, too, based on Applicant’s infrequent contacts with his family members residing in Afghanistan.

One other mitigating condition has mixed application to Applicant’s situation: MC ¶ 8(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.” Between 2007 and 2013, Applicant completed over 50 military deployments to Afghanistan as a cultural advisor without any suggestions of a reporting lapse. Under these circumstances, presumptions are warranted that he complied with all reporting requirements covering foreign contacts.

Whole-person assessment is available also to minimize Applicant’s exposure to potential conflicts of interests with his sister and aunt residing in Afghanistan. As an Army linguist, Applicant is strongly committed to protecting U.S. security interests in Afghanistan and has consistently avoided any notable actions that might add risk to U.S. security interests. Although his sister and aunt residing in Afghanistan remain at risk to terrorist attacks, they know nothing about his linguist duties that could be exploited in a hostage situation.

Whatever security risks associated with Applicant’s family members residing in Afghanistan are imposed on Applicant, they are manageable ones based on Applicant’s demonstrated devotion to duty and the protection of classified information made available to him in the course of executing his command assignments. So, in Applicant’s case, the potential risk of coercion, pressure, or influence being brought to bear on him, or his family members residing in Afghanistan is minimal and mitigated.

Overall, potential security concerns over Applicant’s family members in Afghanistan are sufficiently mitigated to permit safe predictive judgments about Applicant’s ability to withstand risks of undue influence attributable to his familial relationships in Afghanistan. Favorable conclusions warrant with respect to the allegations covered by Guideline B as well.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE B (FOREIGN INFLUENCE):

FOR APPLICANT

Subparagraphs 1.a and 1.b:	For Applicant
GUIDELINE C (FOREIGN PREFERENCE):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge