



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



In the matter of: )  
 )  
 --- ) ISCR Case No. 14-03762  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

06/24/2016

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On August 5, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her on September 2, 2014, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline B (Foreign

<sup>1</sup> Item 3 ((SF 86), dated August 5, 2013).

Influence) and detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The DOD adjudicators recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on October 24, 2014. In a sworn statement, dated October 30, 2014, Applicant elected to have her case decided on the written record in lieu of a hearing.<sup>2</sup> A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on August 5, 2015, and she was afforded an opportunity, within 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to her case. Applicant received the FORM on August 12, 2015. A response was due by September 11, 2015. On August 21, 2015, Applicant submitted her response with attachments. Department Counsel had no objections to the documents submitted, and I marked them as Applicant Items (AI) A through F. The case was assigned to me on December 28, 2015.

### **Rulings on Procedure**

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Islamic Republic of Afghanistan (Afghanistan), appearing in extracts of six U.S. Government publications. He also requested that I take administrative notice of certain enumerated facts pertaining to the Republic of Uzbekistan (Uzbekistan), appearing in extracts of two U.S. Government publications. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on specific, selected source information regarding Afghanistan in publications of the U.S. Department of State,<sup>3</sup> the U.S. Department of Defense,<sup>4</sup> and the Congressional Research Service.<sup>5</sup> In addition, the Government relied on specific, selected source information regarding Uzbekistan in publications of the U.S. Department of State.<sup>6</sup>

---

<sup>2</sup> Item 2 (Applicant's Answer to the SOR, dated October 30, 2014).

<sup>3</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices for 2013, *Executive Summary*, undated; U.S. Department of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2013, Chapter 2: Country Reports: South and Central Asia*, undated; U.S. Department of State, Bureau of Consular Affairs, *Afghanistan Travel Warning* (2 of 14 pages), dated December 21, 2015; U.S. Department of State, Bureau of Consular Affairs, (Published by eNews Park Forest), *U.S. State Dept. Updates Afghanistan Travel Warning*, dated September 5, 2014.

<sup>4</sup> U.S. Department of Defense, Report to Congress: Report on Progress Toward Security and Stability in Afghanistan (3 of 132 pages), dated November 2013.

<sup>5</sup> *Congressional Research Service, CRS Report for Congress: Afghanistan: Post-Taliban Governance, Security, and U.S. Policy* (7 of 89 pages), dated October 23, 2011.

<sup>6</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices for 2013 (19 of 40 pages), undated; U.S. Department of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2013, Chapter 2: Country Reports: South and Central Asia*, undated – the same document cited by Department Counsel regarding Afghanistan.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,<sup>7</sup> as set forth below under the Afghanistan and Uzbekistan subsections.

### Findings of Fact

In her Answer to the SOR, Applicant admitted, with explanations, five of the factual allegations pertaining to foreign influence (§§ 1.a., 1.b., and 1.d. through 1.f.). Although the one remaining factual allegation (§ 1.c.) was denied, Applicant actually admitted, with an explanation, a portion of the allegation. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor who, since August 2013, has served as a Certified Linguist Professional (CLP) or simply, a linguist.<sup>8</sup> She previously served as a supervisor or customer service representative for various retail outlets. She has never served in the U.S. military.<sup>9</sup> She has never held a security clearance although her background has been investigated since 2012.<sup>10</sup> Since August 2013, she has served as a civilian linguist for the U.S. Army at or near a U.S. military facility in Afghanistan.<sup>11</sup>

---

<sup>7</sup> Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain pages of facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

<sup>8</sup> Item 3, *supra* note 1, at 12.

<sup>9</sup> Item 3, *supra* note 1, at 17.

<sup>10</sup> Joint Adjudication Management System (JAMS) Person History, dated August 3, 2015, found in the case file.

<sup>11</sup> Item 4 (Counterintelligence-Focused Security Screening Questionnaire, dated August 20, 2013), at 1; Item 5 (Personal Subject Interview, dated May 7, 2014), at 2.

## Foreign Influence<sup>12</sup>

Applicant was born and raised in Afghanistan.<sup>13</sup> Both of her parents (her father was a self-employed pharmacist and her mother, a housewife)<sup>14</sup> were born in Afghanistan. Neither of them was ever associated with the Afghan military or intelligence service.<sup>15</sup> Her father is deceased.<sup>16</sup> Applicant had five sisters and two brothers. Both brothers are deceased. In 1989, her mother moved Applicant and her siblings to Pakistan because of the hostilities in Afghanistan. They sought political asylum, and Applicant's mother and two of Applicant's sisters are now naturalized citizens of the Netherlands residing in the Netherlands.<sup>17</sup> One of Applicant's sisters is a naturalized U.S. citizen residing in the United States, and another sister remains an Afghan citizen, but she resides in Uzbekistan.<sup>18</sup> One of her sisters residing in the Netherlands was affiliated with a government-related university in Afghanistan where she served as a teacher before emigrating.<sup>19</sup> None of Applicant's other siblings was ever associated with the Afghan military or intelligence service.<sup>20</sup>

The SOR also focused on three of Applicant's brothers-in-law. One such individual, married to her sister in Uzbekistan, is an Afghan citizen residing in Uzbekistan where he is a shop owner. He has never been associated with the Afghan military or intelligence service.<sup>21</sup> Another brother-in-law, now a citizen and resident of the Netherlands, was an Afghan Army pilot in the 1980's before he left Afghanistan. He has no continuing relationship with the Afghan military or intelligence service.<sup>22</sup> The third brother-in-law, a citizen and resident of Afghanistan was an officer in the 1970's with the Afghan intelligence service, and he was imprisoned for six years under the Soviet

---

<sup>12</sup> General source information pertaining to the foreign influence issues discussed below can be found in the following exhibits: Item 3, *supra* note 1; Item 2, *supra* note 2; Item 4, *supra* note 11; Item 4 (Foreign Travel, dated August 20, 2013); Item 4 (Developed Relatives and Associates, dated August 20, 2013); Item 4 (Relatives and Associates, dated August 20, 2013); Item 4 (Relatives and Associates with Military and Government Service, dated August 20, 2013); Item 5, *supra* note 11); AI A (Applicant's Response to the FORM, dated August 21, 2015); AI C (Foreign Travel, dated August 20, 2015); AI D ((Relatives and Associates, dated August 20, 2015); AI E (Relatives and Associates with Military and Government Service, dated August 20, 2015); AI F (Afghanistan and Pakistan, dated August 20, 2015).

<sup>13</sup> Item 3, *supra* note 1, at 9; AI C, *supra* note 12, at 1.

<sup>14</sup> Item 11 (Relatives and Associates chart, dated February 24, 2011), at 1.

<sup>15</sup> AI D, *supra* note 12, at 1; Item 3, *supra* note 1, at 21.

<sup>16</sup> AI D, *supra* note 12, at 1.

<sup>17</sup> AI D, *supra* note 12, at 1-2; AI C, *supra* note 12, at 1; Item 3, *supra* note 1, at 19-20.

<sup>18</sup> AI D, *supra* note 12, at 1-2.

<sup>19</sup> AI E, *supra* note 12; AI D, *supra* note 12, at 2.

<sup>20</sup> AI D, *supra* note 12, at 1-2.

<sup>21</sup> Item 5, *supra* note 11, at 4; AI D, *supra* note 12, at 3.

<sup>22</sup> Item 5, *supra* note 11, at 4; AI D, *supra* note 12, at 3; AI E, *supra* note 12.

occupation. He has no continuing relationship with the Afghan military or intelligence service.<sup>23</sup> Other than her two brothers-in-law who were in either the Afghan military or intelligence service, no immediate or extended member of Applicant's family or friends or associates has ever been a member of any of the international or foreign terrorist organizations, intelligence services, or military services listed during her counterintelligence-focused security screening.<sup>24</sup>

Applicant was married to a U.S. citizen in an arranged marriage in Pakistan in March 1997.<sup>25</sup> She and her husband immigrated to the United States that same month, with Applicant using a U.S.-issued immigration refugee travel document.<sup>26</sup> Her husband abandoned her at the airport upon their arrival. She and her husband separated in 1998,<sup>27</sup> and although she stated they were divorced, she did not specify when that divorce took place. She became a naturalized U.S. citizen in 2008.<sup>28</sup> Applicant continued her education in the United States, receiving an associate's degree in 2002 and a bachelor's degree in 2005.<sup>29</sup>

The frequency of contacts between Applicant and her family members differs with each individual. In 2013 she reported that she generally spoke with her mother by telephone on a weekly basis; her sisters on a weekly or quarterly basis; and her brothers-in-law on a quarterly, annual, or rare basis.<sup>30</sup> None of Applicant's family members are aware that she is currently working with the U.S. Government, and they are not aware that she is actually located in Afghanistan.<sup>31</sup>

Applicant has no financial interests in Afghanistan, and does not own any investments or property there.<sup>32</sup> While she does not financially support any relatives in Afghanistan, Uzbekistan, or the Netherlands, she has periodically sent modest funds to some of them. She sent \$1,500 to \$2,000 to her sister in Afghanistan to help with medical expenses and unspecified sums to the same sister if needed; and \$1,000 to \$1,500 to her sister in Uzbekistan for birthday gifts for her children.<sup>33</sup> Applicant has

---

<sup>23</sup> Item 5, *supra* note 11, at 4; AI D, *supra* note 12, at 3; AI E, *supra* note 12.

<sup>24</sup> AI F, *supra* note 12.

<sup>25</sup> Item 5, *supra* note 11, at 1; Item 4 (Counterintelligence-Focused Security Screening Questionnaire), *supra* note 11, at 3.

<sup>26</sup> Item 5, *supra* note 11, at 1-2; Item 3, *supra* note 1, at 7.

<sup>27</sup> Item 5, *supra* note 11, at 1; Item 3, *supra* note 1, at 19.

<sup>28</sup> Item 5, *supra* note 11, at 1; Item 3, *supra* note 1, at 6.

<sup>29</sup> Item 3, *supra* note 1, at 10-12.

<sup>30</sup> Item 3, *supra* note 1, at 19-30; Item 2, *supra* note 2.

<sup>31</sup> Item 2, *supra* note 2.

<sup>32</sup> Item 3, *supra* note 1, at 14.

<sup>33</sup> Item 2, *supra* note 2; Item 4 (Counterintelligence-Focused Security Screening Questionnaire), *supra* note 11, at 8.

savings of approximately \$124,120, and stocks worth approximately \$3,586. Her monthly remainder available for discretionary saving or spending is approximately \$3,392.<sup>34</sup> Applicant considers herself to be a loyal American, and noted that it is important to protect U.S. missions and secrets because “it is my country. My country is my home.”<sup>35</sup>

## **Afghanistan**

Formerly under the control of the United Kingdom, Afghanistan received independence in August 1919. It has common borders with Pakistan on the east and the south, Iran on the west, and Russia on the north. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979, occupation by the Soviet Union until 1989, and civil war between the occupiers and home-grown freedom fighters, known as mujaheddin. Anarchy ensued, and fighting continued among the various ethnic, clan, and religious warlords and their respective militias even after the Soviet Union withdrew from the country. By the mid-1990s, the Taliban rose to power and controlled significant portions of the country, imposing repressive policies and Sharia law, guiding all aspects of Muslim life. Afghanistan became a sanctuary for terrorist groups.

After the September 11, 2001 terrorist attacks, United States demanded that Afghanistan expel Osama Bin-Laden and his followers. Those demands were rejected by the Taliban. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power. Following a few years of governance by an interim government, a democratic presidential election took place in October 2004, and a new democratic government took power. Despite the election, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. Terrorists continue to target United States and Afghan interests through suicide bombings, assassinations, and hostage taking.

A major concern, particularly during 2012, was “insider attacks” (attacks on the North Atlantic Treaty Organization (NATO)-led security mission in Afghanistan, the International Security Assistance Force (ISAF) by Afghan security personnel (also known as “green on blue” attacks). These attacks, some of which apparently were carried out by Taliban infiltrators into the Afghan forces, declined by late 2012 but continued occasionally in 2013. In 2013, insurgents conducted a significant number of large vehicle-borne improvised explosive device attacks, targeting Coalition Forces bases, military convoys, and Afghan government buildings, mostly in southern and eastern Afghanistan. Insurgents across Afghanistan used a variety of tactics to target Afghan security personnel and Coalition Forces in well-coordinated, complex attacks in

---

<sup>34</sup> AI B (Personal Financial Statement, dated August 20, 2015).

<sup>35</sup> Item 4 (Counterintelligence-Focused Security Screening Questionnaire), *supra* note 11, at 10.

major cities and rural areas, seeking to expand their territorial influence and further disrupt civil governance.

Afghanistan's human rights record remains poor, for there are continuing extrajudicial killings; torture and other abuse; widespread official corruption and impunity; ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; judicial corruption; violations of privacy rights; violence and societal discrimination against women; sexual abuse of children; trafficking in persons; and restrictions on freedoms of religion, the press, assembly, and movement.

Taliban insurgents retain the capability and intent to conduct attacks and kidnappings of Americans, other Western nationals, and members of the local populace. The United States has made a long-term commitment to help Afghanistan rebuild itself after decades of war, and along with others in the international community, provides substantial assistance, focusing on reintegration, economic development, improving relations with Afghanistan's regional partners, and steadily increasing the security responsibilities of the Afghan security forces. Furthermore, there is increased terrorist support coming into Afghanistan from Pakistan and Iran. Not only has the security situation remained volatile and unpredictable throughout Afghanistan, but there are also tensions with Afghanistan over limiting U.S. military operations.

A U.S. State Department Travel Warning for Afghanistan remains in effect, and U.S. citizens are warned against travel to Afghanistan. The security situation in Afghanistan is extremely unstable and the security threat to all U.S. citizens in Afghanistan remains critical.

## **Uzbekistan**

Uzbekistan - a Central Asian nation and former Soviet republic - is an authoritarian state. It shares a border with Afghanistan and has expressed concern about a potential "spillover effect of terrorism." Al-Qaida remains a threat and has looked to consolidate power with other terrorist organizations in the region. Uzbekistan's counterterrorism effectiveness is undermined by its lack of respect for fundamental human rights, ineffective and overly bureaucratic institutions, and slow progress in establishing the rule of law. Nevertheless, there were no confirmed reports that the government or its agents committed arbitrary or unlawful killings. Following the September 11<sup>th</sup> attacks on the United States, Uzbekistan won favor with Washington by allowing its forces to establish a base in Uzbekistan, affording ready access across the Afghan border.

## **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."<sup>36</sup> As Commander in Chief,

---

<sup>36</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>37</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>38</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>39</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

---

<sup>37</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>38</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>39</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>40</sup>

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.”<sup>41</sup> 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 as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern under the Foreign Influence guideline is set out 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>42</sup> Applicant has varied relationships with her immediate and extended family members, some of whom reside in foreign countries. Although several of those family members are citizens and residents of the Netherlands, with the exception of the one brother-in-law who was a former Afghan Army pilot in the 1980’s, there are no security concerns regarding the others in the Netherlands. There are also security concerns regarding her sister and brother-in-law residing in Uzbekistan

---

<sup>40</sup> *Egan*, 484 U.S. at 531

<sup>41</sup> See Exec. Or. 10865 § 7.

<sup>42</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

and another sister and brother-in-law who reside in Afghanistan. Her family members residing in the United States are not a security concern.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), it is potentially disqualifying where there is:

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.

Similarly, under AG ¶ 7(b), security concerns may be raised when there are:

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.

AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with her sisters and brothers-in-law who reside in Afghanistan, Uzbekistan, and her one brother-in-law residing in the Netherlands to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where:

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.

Similarly, AG ¶ 8(b) may apply where the evidence shows:

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.

In addition, AG ¶ 8(c) may apply where "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."

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.<sup>43</sup> In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."<sup>44</sup>

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

As noted above, since October 2001, when U.S. forces and coalition partners led military operations in Afghanistan, there has been first an interim government, and then a democratic government in Afghanistan. Nevertheless, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. It is less likely that the Afghan government would attempt coercive means to obtain sensitive information. The real concern in this instance is not the Afghan government, but rather al-Qaida and Taliban terrorists. One of Applicant's sisters, and her brother-in-law still reside in Afghanistan, another sister and a brother-in-law reside in Uzbekistan, and another brother-in-law resides in the Netherlands, and there is a potential, if not substantial, risk – a "heightened risk" – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. The security significance of the former positions of her two brothers-in-law with respect to their affiliations with the Afghan government in the 1970's and 1980's are substantially diminished. Other than those two brothers-in-law, there is no evidence that Applicant's immediate or extended family members are or have ever been political activists, challenging the policies of the Afghan or Uzbeki governments; that terrorists have approached or threatened Applicant or her family members for any reason; that the Afghan government, Uzbeki government, al-Qaida, or the Taliban have approached Applicant; or that her family members currently engage in activities that would bring attention to themselves. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Afghan government, the Uzbeki government, al-Qaida, or the Taliban, which may seek to quiet those who speak out against them. Moreover, there are U.S. military forces stationed in both Afghanistan and Uzbekistan,

---

<sup>43</sup> See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

<sup>44</sup> ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

and Applicant's continued presence in Afghanistan would be of significant assistance to assisting those U.S. forces in fulfilling their mission.

Applicant has connections to the United States, having lived in the United States for nearly two decades. Her ex-husband and one sister and brother-in-law are U.S. citizens residing in the United States. She has substantial financial assets in the United States. Moreover, Applicant wants her security clearance so that she can remain in Afghanistan to assist U.S. Armed Forces in their combat and intelligence-gathering mission there. This is not a situation where an applicant seeks a security clearance so he or she can simply work with classified information and enjoy the comforts of home in the United States. Applicant has offered to continue to risk her life to support the United States' goals in Afghanistan, and has shown her patriotism, loyalty, and fidelity to the United States. Applicant's continuing relationship with her family members in Afghanistan is close and her contacts with them, though varied, are relatively frequent, too close and frequent to generate more than a limited application of AG ¶¶ 8(a) and 8(c). Her relationship with her family members in Uzbekistan, while also close, is not of such significance. Applicant has met her burden of showing there is little likelihood that relationships with her family members could create a risk for foreign influence or exploitation. Furthermore, I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that she has "such deep and longstanding relationships and loyalties in the U.S., that [she] can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶ 8(b) applies.

### **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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>45</sup>

---

<sup>45</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence against mitigating Applicant's situation, because her one sister and brother-in-law are Afghan citizen-residents, and are at risk from al-Qaida and Taliban terrorists. (See AG ¶ 2(a)(8).)

The mitigating evidence under the whole-person concept is more substantial. Applicant has offered to continue to risk her life to support the United States' goals in Afghanistan, and has shown her patriotism, loyalty, and fidelity to the United States. She is fully aware of the risks to herself and her sister and brother-in-law from al-Qaida and Taliban terrorists. These circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit her.<sup>46</sup> Moreover, while the "heightened risk" of terrorist activities occurring in Afghanistan and, to a lesser extent, in Uzbekistan are of significance, it should also be remembered that terrorists and would-be terrorists are also active in the United States, creating a "heightened risk" here as well. With the vast majority of her family members residing in locations outside of Afghanistan, there is a reduced "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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.

---

ROBERT ROBINSON GALES  
Administrative Judge

<sup>46</sup> See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).