



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-18733
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

September 5, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence), based on Applicant's family ties in Afghanistan and Pakistan. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his security clearance application on May 1, 2006. On March 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on March 18, 2008, and he requested a hearing before an administrative judge. DOHA received the request on April 21, 2008. Department Counsel was ready to proceed on May 12, 2008, and the case was assigned to me on May 14, 2008. DOHA issued a notice of hearing on June 2, 2008, scheduling the hearing for June 18, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits (AX) A through M, which were admitted without objection. DOHA received the transcript (Tr.) on June 27, 2008. The record closed on July 3, 2008.

### **Evidentiary Rulings**

I granted Department Counsel's request to take administrative notice of relevant facts about Afghanistan (Tr. 42). The request to take administrative notice and the supporting materials are attached to the record as Hearing Exhibit (HX) I. I also granted Department Counsel's request to keep the record open until July 3, 2008, to enable him to submit additional materials for administrative notice and to expand his request to include Pakistan (Tr. 42, 99-100). Department Counsel timely submitted HX II. I declined to accept two Congressional Research Service reports as a basis for administrative notice. The reports are scholarly briefings of the issues, but there is no evidence that the conclusions of the authors were accepted by the U.S. government as not subject to reasonable dispute. I admitted the documents, however as GX 4 and 5. The facts administratively noticed are set forth below in my findings of fact.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a through 1.d and 1.h. He partially admitted the allegations in SOR ¶¶ 1.e through 1.g. His admissions in his answer to the SOR and at the hearing are incorporated in my findings of fact.

Applicant is a 35-year-old linguist employed by a defense contractor. He was born in Afghanistan. He attended a university in Russia from 1982 to 1987, received a master's degree in television broadcasting, and then returned to Afghanistan. He fled to Pakistan in 1989 to avoid the violence in Afghanistan, and he was granted asylum in the U.S. in 1990. He was the owner and operator of a coffee truck from January 1991 to May 2004. He became a U.S. citizen in May 1998. In May 2004, he began his current job as a linguist. He held an interim clearance until November 2007, but he does not have a final security clearance.

Applicant was deployed to Afghanistan and Pakistan in support of U.S. military forces from October 2004 to September 2006 (AX G and J), and April 2007 to November 2007, when his interim clearance was withdrawn (AX H and I). His direct supervisor from June 2005 to June 2007 described his performance as "exemplary." He considered Applicant to be one of the most reliable and trustworthy employees in the company. Applicant handled very sensitive information and was meticulous in

maintaining operational security. Military units needing support from linguists frequently requested Applicant by name (AX A). He received several mementos and numerous certificates of appreciation during his deployments (AX B, C, D, and M).

Two of Applicant's co-workers described him as a skilled, conscientious, and dedicated linguist. During one mission, he worked ten to fourteen-hour days seven days a week for 78 days while living and working in austere conditions (AX E and F). During the hearing, Applicant was unable to describe the missions he supported because they were classified, but he testified he frequently rode in helicopters at night, and he presented evidence of an injury he suffered while rappelling from a helicopter (AX K; Tr. 82-83). He testified he worked with U.S. troops, wore a military uniform, and sometimes carried a weapon (Tr. 88).

None of Applicant's family members knows he works with U.S. military forces. He has told them he is working as an engineer. He lives in a small military compound while deployed, but he is given a week's vacation away from the compound about every three months, during which he can stay in a hotel and visit his family (Tr. 80). When he visits his family, he tells them he is working in Baghdad as an engineer for a short time and will return to the U.S. He recognizes his family would be in danger if his involvement with U.S. military forces was revealed. He has advised his family members to contact the U.S. embassy or U.S. military forces if they are threatened, and to identify themselves as having family in the U.S. (Tr. 84). He testified: "If they got killed from the Taliban, you know, I can't do nothing. I hope that does not happen to them." (Tr. 84.)

Applicant was married in April 1996 to a native of Afghanistan. The marriage took place in Pakistan. His spouse became a U.S. citizen in May 2004. They have three children, ages 11, 8, and 4, all of whom are U.S. citizens. Applicant's spouse knows that he travels overseas and works as a linguist, but she is unaware of his specific job, the places where he works, and that he works with U.S. military forces (Tr. 85, 89).

Applicant's family fled to Pakistan in 1994. They returned to Afghanistan after coalition forces ousted the Taliban from power. Applicant's father died in 1992, and one of his brothers was killed in 1994 (Tr. 63). His mother is a citizen and resident of Afghanistan, and she lives with one of Applicant's sisters in the family home (Tr. 69). She is unemployed, and she receives about \$300 per month from Applicant. Applicant has telephone contact with his mother about two times a month and twice a year in person.

Applicant has two living brothers. One is a citizen and resident of Afghanistan and is employed by the Afghan government (Tr. 74). The other brother lives in Germany, and Applicant believes he is a German citizen. He works as a truck driver and has three sons and four daughters living in Afghanistan (Tr. 75). Applicant has email contact with his brothers about twice a month.

Applicant's two sisters are citizens and residents of Afghanistan. Both are teachers. Applicant has personal contact with one sister about twice a year, when he is

in Afghanistan, and he has telephonic contact with his other sister two or three times a month. One sister's husband is deceased, and the other's husband owns a grocery store (Tr. 70).

Applicant's father-in-law and mother-in-law are citizens and residents of Afghanistan. His father-in-law is a government employee. His mother-in-law is a housewife. Applicant has contact with his mother-in-law and father-in-law about once a month by telephone.

Applicant's brother-in-law is a citizen and resident of Afghanistan, and he works in a hotel. He has several sisters-in-law who live at home in Afghanistan and are not employed outside the home (Tr. 73).

Applicant's spouse has an uncle living in Pakistan. Applicant regards her uncle as a friend and has visited him in Pakistan several times while on vacation from his official duties (Tr. 79-80). He has had no contact with her uncle since returning to the U.S. in November 2007 (Tr. 81).

Applicant owns no property in Afghanistan or Pakistan. He purchased a home in the U.S. in 2004 (Tr. 91).

At the end of the hearing, Applicant expressed his gratitude for the opportunity to be heard. He explained: "I am so sad when I lost my clearance . . . I was thinking nobody going to listen to me, no one going to bring me for a hearing. That's why I'm here, you know. I'm so proud. United States is a great country and I love this country." (Tr. 92.)

I have taken administrative notice that Afghanistan has been an independent nation since 1919, and it was a monarchy until a military coup in 1973. Following a second military coup in 1978, a Marxist government emerged. In December 1979, the Soviet Union invaded and occupied Afghanistan, but they were resisted by freedom fighters known as mujahidin. The Soviet Union withdrew in February 1989 pursuant to an agreement signed by Pakistan, Afghanistan, the U.S., and the Soviet Union. The mujahidin were not a part to the agreement and refused to abide by it. The result was a civil war among several factions, including the Taliban. By the end of 1998, the Taliban controlled most of Afghanistan, committed atrocities against minority populations, and provided sanctuary to Osama Ben-Laden, Al Qaida, and other terrorist organizations. U.S. military forces, along with forces from a coalition partnership, forced the Taliban out of power by November 2001. With the assistance and support of the U.S., a new democratic government took office in 2004.

I also have taken administrative notice that Afghanistan's human rights record is generally poor, due to the continuing insurgency, the weak government, and ongoing recovery efforts from two decades of war. Abuses include extrajudicial killing, torture, official impunity, and restrictions on individual rights. Killings by security forces, factional forces militias, terrorists and insurgents are a continuing problem. The weak

government and internal instability have enabled hostile states, non-state actors, terrorists, and insurgents to continue operating in Afghanistan, including groups hostile to the U.S. Although there is no evidence that Afghanistan conducts intelligence operations against the U.S., several terrorist groups conduct intelligence activities as effectively as official government intelligence agencies.

The U.S. has supported the emergence of a broad-based democratic government and is assisting the Afghan people to rebuild their country and establish a representative government that contributes to regional stability and respects human rights. In May 2005, the presidents of the two countries concluded a strategic partnership agreement committing both countries to a long-term relationship.

In spite of efforts by the U.S. and the government of Afghanistan, it continues to be a violent, unsafe, unstable country. Terrorists have targeted international non-governmental organizations, United Nations workers, and recipients of non-governmental assistance. Suicide bombing attacks continue to inflict large numbers of casualties.

Finally, I have taken administrative notice that Pakistan is a parliamentary federal republic with whom the U.S. has had diplomatic relations since 1947. Although Pakistan has supported the U.S. campaign against terrorism, Many Al Qaeda and Taliban fugitives use the loosely-controlled border regions between Afghanistan and Pakistan as a refuge. Extremist groups in Pakistan target American and other Western interests, senior Pakistani officials, and members of minority indigenous and religious groups. Pakistan has a poor human rights record, with a record of extrajudicial killings, torture and rape by security forces, lack of judicial independence, arbitrary arrest, wide-spread government corruption, and the disappearance and imprisonment of political opponents.

A government document submitted by Department Counsel (GX 5) reflects U.S. concern arising from Pakistan's transfer of weapons technology, including nuclear technology, to North Korea, Iran, and Libya. Although I did not take administrative notice of this fact because of the nature of the source document, I find that the U.S. government's concerns about Pakistan's weapons technology transfers are established by substantial evidence.

## **Policies**

"[N]o 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 applicants 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 and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). 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 over-arching adjudicative goal is a fair, impartial and common sense 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 protect or 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.

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. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. 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). "[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

### Guideline B, Foreign Influence

The SOR alleges Applicant's mother, two sisters, one brother, mother-in-law, and father-in-law are citizens and residents of Afghanistan, and that Applicant sends his mother about \$300 per month (SOR ¶¶ 1.a, 1.b, and 1.c). It alleges Applicant's brother and father-in-law have positions in the Afghan government (SOR ¶ 1.d and 1.e). It also alleges Applicant's spouse's uncle and grandmother are citizens of Afghanistan residing in Pakistan, and that Applicant visited his spouse's uncle at least three times (SOR ¶¶ 1.g and 1.h). Applicant has pointed out that his spouse's mother-in-law, not her grandmother, resides in Pakistan. Finally, the SOR alleges Applicant traveled to Afghanistan in March 2005, August 2005 through September 2005, January 2006 through May 2006, and April 2007 (SOR ¶ 1.f)

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

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). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. 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 operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the

country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

A disqualifying condition under Guideline B may be raised by “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.” AG ¶ 7(a). Second, a disqualifying condition may be raised by “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(b). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant’s relationships with family members in Afghanistan raise these two disqualifying conditions.

A security concern also may be raised if an applicant is “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” AG ¶ 7(d). Although Applicant’s spouse is a citizen and resident of the U.S., her immediate family members are citizens and residents of Afghanistan. “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption. He also has a friendly relationship with his wife’s uncle in Pakistan. I conclude AG ¶ 7(d) is raised.

Applicant’s travel to Afghanistan was either to perform his duties as a linguist or to visit his family members. Neither purpose has any independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005). Similarly, Applicant’s financial support to his mother merely demonstrates his ties of affection and obligation to his mother, and it has no independent security significance.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 7(a), (b), and (d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Security concerns under this guideline can be mitigated by showing that “the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.” AG ¶ 8(a). Applicant has close and continuing contact with his family and his wife’s family. Although the U.S. and Afghanistan are allies in the war on terrorism and the U.S. is committed to the establishment of a free and independent government in Afghanistan, terrorists and insurgents continue to threaten the government of Afghanistan, the interests of the U.S., and those who cooperate with the U.S. and the government of Afghanistan. Applicant



recognizes his work with the U.S. military forces endangers his family. I conclude AG ¶ 8(a) is not established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b). Applicant’s loyalty to his family is not “minimal,” but he has “deep and longstanding relationships and loyalties in the U.S.” He has worked as a linguist for the U.S. since October 2004. He has been a U.S. citizen since 1998. His wife has been a U.S. citizen since May 2004. He held an interim clearance until November 2007 without incident. He has a reputation among his supervisors and colleagues for reliability, trustworthiness, and meticulous attention to operational security. He has put himself in harm’s way often, working alongside U.S. forces in numerous covert operations. He has made significant contributions to national security, fully aware of the risks to himself and his family. He strongly wants to return to his duties with U.S. troops. All these circumstances demonstrate that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). I conclude AG ¶ 8(b) is established.

### **Whole Person Concept**

Under the whole person concept, an 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. An 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant was candid, sincere, and credible at the hearing. He was careful during the hearing not to disclose sensitive or classified information about his experiences with the U.S. military forces. He and his family have suffered under the Taliban, and Applicant sees the fight against terrorists, insurgents, and extremists as necessary to

protect the quality of life of his family members in Afghanistan. He has repeatedly demonstrated his bravery, reliability, and trustworthiness. He has mentally and emotionally resolved the conflict between the safety of his family from terrorists and his desire to help the U.S. military forces. He has repeatedly placed himself in harm's way to ensure that the terrorists will not prevail in the struggle for Afghanistan's future.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. In addition to my conclusion that the mitigating condition in AG ¶ 8(b) is established, I also conclude that application of the whole person concept mitigates the security concerns based on Applicant's foreign family ties. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.h	For Applicant

### **Conclusion**

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

---

LeRoy F. Foreman  
Administrative Judge