



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-04597
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: Stephanie N. Mendez, Esquire

August 16, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF-86) on May 12, 2006. On March 8, 2010, 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 (Foreign Influence). 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 adjudicative guidelines (AG).

Applicant acknowledged receipt of the SOR on March 22, 2010, and requested a hearing before an administrative judge. DOHA assigned the case to me on April 22, 2010. DOHA issued a notice of hearing on May 13, 2010. I convened the hearing as scheduled on June 24, 2010. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified on his own behalf and submitted nine documents (AE A-I), which were admitted without objection. DOHA received the

transcript of the hearing (Tr.) On June 30, 2010. Eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Afghanistan. (Tr. 16) The request and the attached documents are included in the record as Hearing Exhibit I. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in ¶ 1.a and ¶1.b. His admissions are incorporated in my findings of fact. I make the following findings:

Applicant is a 61-year-old man who was born and educated in Afghanistan. He was selected to attend an army academy, and he graduated in 1972. Applicant served as an officer in the Afghan military from 1972 until 1979. (Tr. 23) He fled Afghanistan, after being jailed in 1979, and lived in a refugee camp. Applicant requested to come to the United States and has lived in the United States since 1981. (Tr. 20) He became a naturalized U.S. citizen in 1996. In 1998, 1999, 2000, and 2004, Applicant traveled to Afghanistan. (SOR ¶ 1.b) He has been employed with his current employer since March 2005 as an interpreter and cultural advisor. (GE 1) Applicant has held a security clearance for approximately five years while working in Afghanistan for the U.S. Army.

Applicant is married and has four children who are U.S. citizens. (GE 1) His wife is a naturalized U.S. citizen. (Tr. 23) His father died in 1976. His mother is a permanent resident in the United States. (Tr. 49) Applicant's mother-in-law and father-in-law are naturalized U.S. citizens and residents of the United States.

Applicant's oldest brother lives in Afghanistan. (SOR ¶ 1.a) He is in his late70's and is mentally disabled. (Tr. 26) He rarely leaves his home. (Tr. 30) Applicant's nephew, who cares for Applicant's brother, speaks to Applicant on the phone several times a year to provide information about his father's health.

When one of Applicant's other brothers died in 1998, Applicant went to Afghanistan for the funeral. (Tr. 27) Applicant returned to Afghanistan in 1999 to settle his estate. (Tr. 28) When visiting, Applicant stayed with his family for approximately one month. (Tr. 66)

Applicant's remaining brothers live in the United States. One brother is a naturalized U.S. citizen who is also an interpreter in Afghanistan. The other brother is a U.S. permanent resident. (GE 2)

Applicant has three sisters. Two sisters are naturalized U.S. citizens and residents living in the United States.¹ One sister is a citizen and resident of Germany. (GE 2)

In 2004, Applicant returned to Afghanistan because his son was getting engaged. The Afghan tradition is that the father of the groom makes a "proposal" to the bride's family. (Tr. 29) He went again in 2004, due to the engagement party. His wife and son traveled with him. (Tr. 30) The trip lasted approximately one month.

In 2005, Applicant attended his son's wedding in Afghanistan. (GE 3) As was the custom, the bride's family invited the guests and Applicant's family paid for the celebration. At the wedding there were many guests, including one of Applicant's former military colleagues. Applicant had the command's permission to attend the wedding. (Tr. 68)

Applicant has no property in Afghanistan. He has no desire to permanently return to the country. Applicant had a small bank account in Afghanistan to provide for his son's fiancée. Since they are now married and living in the U.S., the account is closed. (Tr. 31) Applicant owns a home in the United States.

At the hearing, Applicant was passionate about his feelings for the United States. He related that he has worked very hard to be a bridge between coalition forces and the Afghan government. He would like to bring both sides to a peace or friendship table. His goal is to improve communication between the two countries. (Tr. 102) As part of his daily work, Applicant has business meetings with the police department, Afghan Army department and Afghan intelligence. (Tr. 38)

Applicant was candid in answering questions about his contacts with former colleagues from his time in the military academy or in the Army. When Applicant moved to the United States he had no contact with them. (Tr. 82) However, he did see them on the street at times when he visited Afghanistan before his interpreter position with the U.S. Army. He was credible in his testimony that he did not maintain regular contact with them. He also explained that he sees one of them as part of his work with the U.S. Army during meetings. He explained that naturally when someone who has known him from his early years in Afghanistan sees him they say hello. He acknowledged that many times he does not even recognize them. (Tr. 149) He also tried to explain that the educated community in Afghanistan is small and everyone knows everyone. He has received telephone calls once or twice from one former military colleague who he sees at business meetings when something occurs that might need to be communicated to his Army command. (Tr. 101)

Since March 2005, Applicant served as an interpreter/cultural advisor for the Special Operations Task Force-Afghanistan and Combined Joint Special Operations

Applicant has one sister who is also an interpreter in Afghanistan. His sister-in-law and two brothers-in-law are also working as interpreters in Afghanistan.

Task Force-Afghanistan. (AE A) He remained in his position until he returned to the U.S. in January 2010. He resides on U.S. military installations when he works in Afghanistan. He does not leave the compound except with permission. (GE 3). However, as part of his position, he sees former military colleagues in meetings. (Tr. 33) His one brother who lives in Afghanistan did come to the gate of Applicant's base to see him. (Tr. 129) Applicant is not allowed to walk freely on any city streets in Afghanistan. (Tr. 146) Applicant has been viewed as an invaluable member of the team and most important as a friend to all members of the Operations Detachment. (AE B)

Applicant asserted his pride of U.S. citizenship and love for his work with the Army (AE A). He worked long hours for six days a week. He went on missions with the U.S. Army. He has willingly put himself in danger every day for almost five years in order to help the United States. Applicant emphasized that he would never betray the United States. He wants to "sacrifice his life and his family's life for the United States." (Tr. 38) Applicant is proud to be a first generation American. He wants to support the U.S. "by his blood." (Tr. 102)

There is no evidence in the record that Applicant breached any security policies or procedures while holding a security clearance in Afghanistan. He has alerted his command of his travels and contacts in Afghanistan. He has letters of appreciation for his work in Afghanistan (AE A-H).

Applicant disclosed in his 2009 DOHA interrogatories the nature and extent of his extended family. He has cousins, aunts and uncles who reside in Germany. His wife, who is also employed as an interpreter in Afghanistan, has extended family in Afghanistan. Applicant has little or no contact with them. He does know that his wife has family members (sister and husband) who are serving as interpreters in Afghanistan. (Tr. 132)

A Special Forces major commanding a unit in Afghanistan recommends Applicant for continued service. The major worked closely with Applicant during an eight month combat rotation in Afghanistan. During that time, he writes that Applicant is "without doubt the most trustworthy and patriotic individual he has had the pleasure of working with." Applicant's "performance while serving with the United States Special Forces from July 2009 through January 2010 was superlative." (AE G)

The major described Applicant's contributions to mission accomplishment by stating:

Applicant served as the unit Commander's personal interpreter and Cultural Advisor. In this capacity, he personally liaised with numerous political and military officials within the Government of the Islamic Republic of Afghanistan. As part of this liaison, he would engage these individuals in order to gain concurrence with key initiatives, mitigate Anti-Afghan Forces' Propaganda and/or pass critical information to key leaders. The end result of his work was that the unit and subsequently coalition force commanders

built and or maintained close personal relationships with Afghan personalities who directly shaped the military and political environment of a particular province in Afghanistan.

Applicant's success in the endeavor was evident during the AAF's relatively ineffective Summer Campaign. Applicant's wise counsel, unwavering dedication and tireless service was an integral part of the unit's ability to disrupt the AAF's propaganda machine while allowing the unit and coalition forces the opportunity to seize the offensive in the information operations arena. The impact of this feat was that the unit enjoyed operational freedom of action to defeat the enemy on the battlefield while leveraging his influence with local, provincial and national leaders to ensure their support. Applicant's performance in this capacity was absolutely brilliant and his loyalty beyond reproach.

Applicant presented another 2010 recommendation from a Special Forces major who commands a unit with the U.S. Army in Afghanistan. (AE H) The major supports Applicant for retention of his security clearance. According to the major, Applicant's previous experience as a former Afghan military officer provides him with an immense knowledge base. This network easily allows Special Forces operators to execute key leader engagements which are crucial to their operational success in Afghanistan."

For over four years, Applicant has selflessly served as a linguist in support of United States Special Forces units in Afghanistan. He is an expert in translating both written and spoken Persian-Dari and Pashtu. The scope of his responsibilities range from translating messages and coordinating meetings with high profile indigenous leadership to gathering sensitive information. He has a tireless work ethic and is ready 24 hours a day where he is always prepared for meetings or combat patrols.

In 2009, Applicant was recommended for increased responsibility as a Category III Interpreter, after serving for over four years as a Category II Interpreter in Afghanistan. According to another Special Forces major who commands a unit in Afghanistan, Applicant has faithfully and conscientiously assisted Special Forces Operational Detachments Alpha and Bravo with exemplary translations and assistance in Advanced Special Operations; significantly assisting in the overall success of Operation Enduring Freedom-Afghanistan. (AE C) Moreover,

Applicant possess a perfect command of both the Pashtu and Dari languages greatly enabling Special Forces' mission capabilities. Applicant has also served as a cultural advisor to multiple senior officer commanding all Special Forces in a particular province for the past several years where he has been a vital source of information concerning the people, customs, and culture of Afghanistan. His expertise has led to outstanding rapport between Special Forces and the local national population. His professionalism and maturity make him the lead interpreter for our Fire

Base in all interactions with local power brokers and members of the Government of Afghanistan. Applicant is greatly respected by all members of our Special Forces Detachments and by the entire community.

Applicant's Assistant Detachment Commander commended Applicant's work in Afghanistan in 2006. He worked with Applicant on a daily basis and found him to be one of the most important assets to the mission. (AE E) Applicant not only possesses language and dialect skill but his knowledge of cultural nuances is unique. The commander noted that "Applicant has a unique ability to gather information from individuals whom would have rather not given the information to a foreigner. Applicant has a distinct ability to quickly comprehend difficult tasks. (AE E)

Applicant's linguist manager, a master sergeant with the U.S. army, reports Applicant has served as an integral member of the Special Operations Task Force, Combined Joint Special Operations Task Force - Afghanistan since March 2005. Applicant's manager vouches for the professionalism and dedication of Applicant's work. He is considered to be among the best and most trusted linguists. Applicant interacts on a daily basis, as part of his duties, with Government Officials of Afghanistan (including Chiefs of National Police, Colonels, Generals, and Governors). (AE A)

A staff sergeant who worked with Applicant reports that Applicant is a mature professional who can work unsupervised in certain situations. He is an extremely patriotic citizen, loyal to the United States of America, who will work tirelessly in support of his country. Applicant is an asset to anyone who chooses to employ him. (AE D) The staff sergeant went on to say that:

Applicant can be depended on to ensure that his supervisor's message is conveyed clearly and concisely and likewise. Most importantly, Applicant will ask questions when he is unsure of the content of the message. Applicant consistently improves his language skills to support military operations by studying military terminology during his off duty hours. Applicant is completely discreet and professional in all of his supervisors' operations and will not discuss sensitive issues at inappropriate times or places. Applicant can be depended on to relay unscheduled telephonic messages, asking appropriate follow up questions with no supervision.

Applicant received several awards, commendations and medals/command coins while serving as a translator in Afghanistan from 2005 until 2010. (AE I) He was also awarded several command coins which he brought to the hearing. Applicant received them for meritorious service over the years. (Tr. 98)

I take administrative notice of the following facts about Afghanistan set forth in the Hearing Exhibits, including the fact that Afghanistan has been an independent nation since August 19, 1919, after the British relinquished control. A monarch ruled from 1919 until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. In December 1979, Soviet forces invaded and occupied

Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to an agreement known as the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union which ensured Soviet forces withdrew by February 1989.

The mujaheddin were not a party to the negotiations for the Accords and refused to accept them. As a result civil war continued after the Soviet withdrawal. In the mid 1990's, the Taliban rose to power largely due to the anarchy and warlordism that arose after the Soviet withdrawal. The Taliban sought to impose an extreme interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama BinLaden, Al Qa'ida, and other terrorist organizations.

After the September 11, 2001 terrorist attacks, demands to expel BinLaden and his followers were rejected by the Taliban. U.S. forces and a coalition partnership commenced military operations in October 2001 that forced the Taliban out of power by November 2001. A new democratic Government took power in 2004. Despite progress made since the Taliban was deposed, Afghanistan still faces many daunting challenges. Among these challenges are: defeating terrorists and insurgents, recovering from over three decades of civil strife; and rebuilding a shattered physical, economic, and political infrastructure.

The Taliban, al-Qa'ida, other insurgent groups, and anti-Coalition organizations continue to operate in Afghanistan, resulting in numerous attacks and deaths. Insurgents have targeted non-governmental organizations (NGOs), Afghan journalists, government workers, and UN workers. Instability along the Pakistan-Afghan frontier continued to provide al-Qa'ida with leadership mobility and the ability to conduct training and operational planning, targeting Western Europe and U.S. interests in particular. Kabul, in particular has seen a rise in militant attacks, including rocket attacks, vehicle borne improvised explosive devices (IEDs), and suicide bombings.

At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

The United States supports the efforts of the Afghan Government to establish,

a vibrant civil society, one that emphasizes democratic principles through a rule of law and creates accountable and transparent forms of government. The United States and its international partners remain committed to helping Afghans realize their vision for a country that is stable, democratic, and economically successful, and to an Afghan Government committed to the protection of women's rights, human rights, and religious tolerance.

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 occupy a position . . . that will give that person 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 an applicant meeting the criteria contained in the 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 an applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination of the loyalty of an 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 an 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 an 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)

Applicant has a brother who is a citizen and resident of Afghanistan. (SOR ¶ 1.a). Applicant traveled to Afghanistan in at least 1998, 1999, 2000, and twice in 2004. (SOR ¶ 1.b). The security concern relating to Guideline B 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.

A disqualifying condition 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). A disqualifying condition also 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.”

Applicant’s oldest brother is a citizen and resident of Afghanistan. He is in his mid 70s and mentally disabled. He is not employed. Applicant maintains some contact with him through his nephew several times a year by telephone. He saw him when he attended a funeral for another brother in 1998 and again in 2000. Applicant’s connections to his brother in Afghanistan could create a potential conflict of interest between his security obligations and his desire to help him, only in a situation wherein he was taken hostage or otherwise threatened with harm if Applicant did not cooperate. None of them have any government connections or other position in which they could otherwise benefit from his access to sensitive information or technology. Applicant did not maintain any contact with any former colleagues when in the United States. However, under either disqualifying condition, security concerns could arise in connection with the potential that hostile forces might seek protected information from

Applicant by threatening harm to his family member in Afghanistan. Based on this evidence, AG ¶¶ 7(a) and (b) are raised.

Before his work as an interpreter, Applicant traveled to Afghanistan in 1998, 1999, 2000, and 2004. He was there in 1998 and 1999 for his brother's funeral and to settle his estate. He visited his older brother in 2000. The visit to his brother in 2000 is incorporated into AG ¶ 1.a and has no independent security significance.²

Since the government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.

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). 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). Similarly, AG 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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

²See ISCR Case No. 02-26978 (App. Bd. Sep. 21, 2005).

Applicant has been in the United States since 1981, and he has been a U.S. citizen since 1996. His wife and children are U.S. citizens. His mother is a resident of the United States. His father is deceased. His in-laws are citizens and residents of the United States. Applicant's other brothers and sisters do not live in Afghanistan and are citizens of the United States.

Applicant's work as an interpreter and cultural advisor supported the U.S. military mission in Afghanistan, not the work of those who seek to destroy the growing democracy in Afghanistan. The new Afghanistan government relies upon the U.S. for support, both financially and militarily, as it moves forward with a new form of government. While Afghanistan's human rights record under the Taliban was very dismal and serious problems continue, its human rights record is slowly improving under this government. Since working as an interpreter with the Army for five years, neither Applicant nor his brother has been pressured by any organization to provide any type of information, classified or otherwise, about the United States.

In every case where a sibling lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation, pressure, or coercion is not substantial. Applicant has significant ties to the United States and few ties to Afghanistan. Except for his older brother, his other siblings do not live in Afghanistan. All but one sister are citizens and residents of the United States. One sister is a citizen and resident of Germany. Applicant's children are United States citizens. His mother is a resident of the United States as well as his in-laws. His wife is a citizen who is also an interpreter in Afghanistan. Her brother and his wife are interpreters in Afghanistan. Applicant has no financial or property interests in Afghanistan. He wants to help the United States in its role in the redevelopment of Afghanistan. Applicant's ties with the U.S. are much stronger than his ties with Afghanistan. The Army holds his work as a translator and cultural advisor in high regard. He provided more than language interpretation skills. He explained nuances and practices which greatly assisted the military in accomplishing its mission. During his time in Afghanistan, he worked very hard to help the Army. He developed a high level of trust with the Army and the Afghan locals.

Applicant spoke about his undivided loyalty to the United States. Based on his relationship and loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the U.S. interest. He has lived in the United States since 1981, after fleeing, and did not return to Afghanistan until his brother's funeral and to settle his estate. He owns property in the United States. He has worked in the United States for many years. He has endured dangerous conditions in Afghanistan on behalf of the U.S. Army. He has held a security clearance without any security violations. He credibly testified that he would report someone to the United States government if asked about classified information. There is no evidence that he has connections or contact with any people other than his brother or the former military colleagues he sees as part of his job with the Army in Afghanistan. I find Applicant has such deep and longstanding relationships and loyalties in America that he can be expected to resolve any potential

conflict of interest in favor of the United States. He has established application of AG ¶ 8(b).

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his or her ties to a foreign country; his or her social ties within the U.S.; and, many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Certain circumstances weigh against Applicant in the whole person analysis. First, Applicant has an older brother who still lives in Afghanistan. Terrorists, and even friendly governments, could attempt to use Applicant's brother to obtain information. Second, he was educated in Afghanistan and served as an officer in the Afghan military. Third, he has some contact with his older brother. Fourth, he traveled to Afghanistan after he became an interpreter when he asked for the hand of a bride for his son. In 2005, he attended the wedding in Afghanistan and among the guests was a former military colleague.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant fled Afghanistan after being jailed in 1979. He lived in a refugee camp. Applicant wanted to come to the United States. He is a mature person, who has lived in the United States since 1981, and has been a naturalized citizen since 1996. He has a strong sense of patriotism toward the United States, as witnessed by his dedication and work with the U.S. Army. There is no evidence that he has ever taken any action that could cause potential harm to the United States. His military supervisors, who

work with him daily in a war zone, praised his work in the cause of freedom in Afghanistan. After fleeing in 1979, he never returned until his brother's funeral. He has established his life in the United States. He now owns property in the U.S.

Applicant is a loyal U.S. citizen who has worked under dangerous conditions in support of the national defense. He credibly testified that he would report any attempt to use his family members to coerce him to reveal classified information. The Appeal Board has held that "generally, an applicant's statements, by themselves, as to what he [or she] would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."³

Applicant held a security clearance during his tenure with the U.S. Army without indication that he breached security policies or procedures. He served the United States in a dangerous, high-risk situation and his character references establish his significant contributions to U.S. national security. While contribution to a company is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006):

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by applicant's more immediate disqualifying conduct or circumstances. See, e.g. ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No 02-10113 at 4 (App. Bd. Mr. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to the nation's security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report to a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.⁴ The complicated state of affairs in

³ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

⁴

I conclude that the whole person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG 8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient

Afghanistan places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

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, Foreign Influence: FOR APPLICANT

Subparagraphs 1.a and 1.b: 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.

Noreen A. Lynch
Administrative Judge

to support approval of a security clearance in this case.