



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 08-06795
)
 Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Deputy Chief Department Counsel; and
Raashid S. Williams, Esq., Department Counsel

For Applicant: Christopher Graham, Esq.

06/29/2012

Decision on Remand

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on September 8, 2005. On May 19, 2011, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to grant him access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to grant or deny his application. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guideline B. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 2, 2011, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 19, 2011, and the case was assigned an administrative judge. The administrative judge conducted the hearing on September 1, 2011. At the hearing, Department Counsel submitted Government Exhibits (GX) 1 through 12, which were admitted without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. The administrative judge took administrative notice of relevant facts about Pakistan, based on eight documents presented by Department Counsel. On January 27, 2012, the administrative judge granted Applicant a security clearance.

Department Counsel timely appealed the administrative judge's decision, contending that the administrative judge showed bias in favor of Applicant during the hearing. The Appeal Board found Department Counsel's argument persuasive. On May 25, 2012, the Appeal Board remanded the case for a new hearing by a different administrative judge.

The case was assigned to me on June 1, 2012. DOHA issued a notice of hearing on June 6, 2012, scheduling it for June 13, 2012. I convened the hearing as scheduled. Applicant affirmatively waived the 15-day notice requirement in Directive ¶ E3.1.8. Government Exhibits (GX) 1 through 12 and Applicant's Exhibits (AX) A through J from the first hearing were admitted in evidence without objection. Applicant also submitted five additional exhibits, marked as AX II-A through II-E, which were admitted without objection. Applicant testified and presented the testimony of six witnesses. DOHA received the transcript (Tr.) of the second hearing on June 19, 2012. All references to the transcript in this decision refer to the second hearing, unless specifically noted otherwise.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Pakistan. The request and the documents attached as enclosures were not admitted in evidence but are attached to the record as Hearing Exhibits (HX) I through VIII. Department Counsel did not request that I take administrative notice of any facts about Afghanistan and Kyrgyzstan, both of which are mentioned in the SOR, and I have not done so. The facts about Pakistan that I have administratively noticed are set out 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 he denied the allegations in SOR ¶¶ 1.e through 1.i. His admissions in his answer and at the two hearings are incorporated in my findings of fact.

Applicant is a 36-year-old linguist employed by defense contractors since September 2005. (Tr. 79.) He was hired under a North Atlantic Treaty Organization

(NATO) contract to provide “security vetting services” in Afghanistan. He works on a team that interviews and screens Afghan and other foreign nationals seeking employment with defense contractors. (Tr. 33-34.) The contractor sponsored Applicant for a clearance because of the likelihood that the contract will be changed to require all employees to have a clearance. (September 2011 Transcript at 115-18.) Applicant has never held a security clearance.

Applicant was born in Pakistan. He received a college degree in Pakistan and then operated a family-owned construction business from 1996 to 2000. Because the business was not profitable, Applicant and his family received financial support from two uncles who are citizens and residents of Denmark. (GX 5 at 1.)

Applicant was introduced to his now wife by an aunt who immigrated to the United States in the 1980s. Beginning in 1998, Applicant and his now wife conversed weekly by telephone. His wife is a native of Germany who came to the United States with her family when she was four years old. She has been a naturalized U.S. citizen since June 1998. His now wife came to Pakistan in January 1999 and they were married two weeks later. (GX 5 at 4.) None of his wife’s family members attended the wedding, but numerous members of Applicant’s family attended. (Tr. 146-47.)

Applicant’s wife is 49 years old and lives in the United States. She and Applicant have no children. Applicant’s wife lives in a house owned by Applicant’s aunt and uncle, who are U.S. citizens, hold security clearances, and are currently deployed to Afghanistan as linguists. (Tr. 89.) Applicant’s aunt and uncle have no children, but they treat Applicant as their son. (Tr. 91.) Applicant does not pay rent to his uncle for use of the house, but he pays some of the household expenses. (Tr. 137-38.)

Applicant came to the United States in May 2000 on a marriage visa. He became a U.S. citizen in May 2004. He renounced his Pakistani citizenship and surrendered his Pakistani passport.¹

Applicant worked in various casinos in the United States from May 2000 until he began working for a defense contractor in May 2005. He gambled heavily while working in the casinos and accumulated around \$50,000 in gambling debts. He borrowed about \$25,000 from a cousin and repaid the loan after he began working for a defense contractor. He later loaned \$10,000 to this cousin, and the loan has been repaid. (GX 2 at 2-3; Tr. 102.) His cousin is a U.S. citizen who holds a security clearance and is employed by a defense contractor as a linguist. (GX 5 at 5.)

Applicant also loaned money to other family members after 2005. He loaned \$9,900 to the same uncle who helped Applicant’s family, to enable his uncle to buy an apartment. He made loans of \$3,000 to two cousins, \$5,000 to a cousin, and \$8,000 to the sister who is a U.S. citizen. One of the \$3,000 loans has been repaid. Applicant is

¹ Neither side submitted any evidence addressing whether Pakistan recognizes a right to renounce citizenship. However, it is clear that Applicant believes he has renounced his Pakistani citizenship.

not concerned about the loan to his uncle because of the help the uncle had previously provided to his family. (GX 2 at 2.)

When Applicant submitted his security clearance application (SCA) in September 2005, his birth date was erroneously listed as March 1976 instead of February 1976, one digit of his Social Security number was incorrect, and one digit of his Selective Service registration number was incorrect.² (GX 1 at 6, 29.) He underwent counter-intelligence (CI) screening in August 2007, but his first interview by an Office of Personnel Management (OPM) investigator was in April 2008. In response to DOHA interrogatories, he submitted a copy of the Selective Service registration card reflecting the correct registration number. (GX 11; GX 12.) At the hearing, Applicant denied intentionally providing inaccurate information in his SCA to delay the investigation. To the contrary, he complained about the delay and asked for help in expediting the processing of his SCA.³ (Tr. 176-77.)

From May until October 2007, Applicant was deployed with a NATO combat unit on patrol in the field. His job was to monitor radio traffic and alert his commander to anything that might threaten the unit. His unit was ambushed several times. On several occasions he provided information that saved the lives of soldiers in his unit. (Tr. 79-82, 123-24.)

Applicant's first contract as a linguist ended in October 2007. He knew that, if he renewed his contract, he would be again assigned to a combat unit in the field. He chose not to renew his contract because of the dangerous duties it involved. (GX 5 at 6.) His site manager noted on the exit interview form that Applicant is "a 5-star linguist, dedicated, loyal, and never complains." (AX D.)

After his contract ended, Applicant decided to take a vacation instead of returning immediately to the United States. He knew that there were adverse tax consequences if he stayed in the United States for more than 35 days, and so he decided to spend some time sightseeing. (Tr. 151.) He spent about ten days in Kyrgyzstan, accompanied by a woman who was his barber and had become a friend. The woman was a native of Kyrgyzstan and acted as his tour guide. Applicant stayed in a motel and the woman stayed with her parents. Applicant described the woman as a close friend, but he denied having a romantic or sexual relationship with her. (GX 5 at 6.) He disclosed his relationship with the woman to his wife but did not mention her name. (GX 5 at 9.)

Applicant took the opportunity to gamble in Kyrgyzstan and lost about \$1,000. (GX 2 at 3.) He then visited his two uncles in Denmark for three days and traveled to the

² At the first hearing, Applicant's facility security officer testified he had in his possession a second SCA submitted by Applicant in 2008, but the 2008 SCA was not submitted as evidence. (September 2011 Transcript at 119.)

³ At the first hearing, Department Counsel informed the Administrative Judge that the Government did not believe that the discrepancies in the SCA warranted an amendment of the SOR to allege intentional falsification. (September 2011 Transcript at 123.)

United States, where he spent about two weeks with his wife. (GX 5 at 7.) He stopped gambling after his losses in Kyrgyzstan. (GX 5 at 10.)

Applicant contacted a brother-in-law about opportunities for running a construction business in Afghanistan. After several discussions and a trip back to Afghanistan as a private citizen, Applicant abandoned the idea. (Tr. 82.)

When Applicant learned from a former supervisor that his current employer needed linguists, he applied and was hired in January 2008. His current job does not involve duty with operational units outside the compound. It also offers vacation time three times a year instead of once a year. He works at an entry-control point, screening local civilians seeking to enter the compound. Although he no longer works with operational units in the field, his compound is hit with mortar and rocket fire at irregular intervals, and the entry-control point is vulnerable to truck bomb attacks. (GX 5 at 7-8; Tr. 82-88.) He testified that he does not leave the compound during his off-duty time because he is the "first face" at the gate and is likely to be recognized by "bad guys" who have been denied entry or have been ejected. (September 2011 Transcript at 106-08.)

Applicant's father, deceased since 1989, was a lieutenant colonel in the Pakistan Army. Applicant's mother is a citizen of Pakistan and is a permanent alien resident of the United States. She spends about half her time in Pakistan and half in the United States. (Tr. 92-93.) She is in poor health. Applicant calls her at least once a week. (Tr. 97-98.)

Applicant has two brothers who are citizens and residents of Pakistan. Both are married to citizen-residents of Pakistan. His older brother is a lieutenant colonel in the Pakistani Army. His younger brother worked for less than a year for the Pakistan government in the equivalent of the U.S. Drug Enforcement Agency, and then he was a contractor for the United Nations in Pakistan, working on humanitarian projects. He is now employed by a cell phone company. (GX 5 at 2; Tr. 130-31.) Applicant has contact with his brothers about twice a year. (GX 5 at 3.)

Applicant has three sisters who are citizens and residents of Pakistan. One of his sisters is the vice-principal of a Christian convent school in Pakistan, one is a grammar school teacher in Pakistan, and the third is married to a citizen and resident of Pakistan and does not work outside the home. A fourth sister is a citizen and resident of the United States, married to a U.S. citizen working in Afghanistan as a linguist. (Tr. 96-98.) He has the most contact with the sister who is a grammar school teacher, because this sister cares for their mother in Pakistan. (GX 1 at 21-22; GX 5 at 3-4.)

Applicant's father-in-law, now deceased, was a citizen of Germany. His mother-in-law is a German citizen permanently residing in the United States. She is in 82 years old and is cared for by Applicant's wife.

Applicant maintains infrequent contact with a childhood friend who lives near the family home in Pakistan. He was employed by a Swedish cell phone company. (GX 5 at 11.) This friend runs errands for Applicant's mother if one of Applicant's siblings is not available. (Tr. 101.)

A summary of a CI screening interview in August 2007 reflects that Applicant was concerned about the deteriorating relationship with his wife due to their limited time together. (GX 10 at 3.) A summary of a personal subject interview (PSI) in April 2008 indicates that Applicant told the interviewer that he had "fallen out of love" with his wife and intended to file for divorce when he returned home in April 2008. It also indicates that Applicant told the interviewer that he had established a "romantic relationship" with a young, unmarried woman from Kyrgyzstan employed at Applicant's duty location as a barber, that he talked to the woman daily, and they had "a personal relationship that may develop into something more serious." Finally, the PSI summary indicates that Applicant told the interviewer that he and his wife "agreed to have an open relationship." (PSI attached to GX 8.)

When Applicant reviewed the PSI summary in response to DOHA interrogatories, he took issue with the characterization with his relationship with the woman from Kyrgyzstan. (GX 8 at 341.) He responded to the interrogatories by writing:

It is only dinners or sitting on the boardwalk together as you know males are not allowed to go to female tents as same females are not allowed to male tents etc. It is romantic on base. That's right but it is not in USA. I do not have any plans to go more than that if I would have I would have gone out of the way to Kyrgyzstan. I stopped there only when that was my route to home.

At the hearing, he testified that he was not comfortable with the term "romantic relationship," and the statement about the relationship developing into "something more serious" was inaccurate. He also testified that his "open relationship" with his wife meant that they talked to each other, not that they mutually agreed that each could have other sexual partners. (Tr. 158-59, 180.) He denied telling the interviewer that he was "falling out of love." (Tr. 162.) Finally, he testified that the woman from Kyrgyzstan left her job "a few months ago, and they have had no contact even though he has her email address. (Tr. 169.) He emphatically denied having a sexual relationship with the woman or even thinking about it. (Tr. 180, 81.)

In an affidavit dated January 13, 2010, Applicant admitted his prior comments about his deteriorating marriage, but he explained that he felt it was unfair to his wife to have a husband who returned home only once a year. He further explained that his current employer permitted vacations every four months and, as a result, he and his wife had "returned to normal," and they now had a strong, loving, and trusting marriage. (GX 2 at 3.)

Applicant denied that he married his wife so that he could obtain a visa to immigrate to the United States. He testified that if that had been his motive, he would have left her long ago instead of remaining married for 13 years. (Tr. 180.)

The summary of the August 2007 CI screening interview indicates that Applicant expects to inherit property in Pakistan owned by his mother and grandparents. (GX 10 at 10.) At the hearing, Applicant stated the screening interview summary does not reflect what he said. He testified that his grandmother is deceased and he believes that the property is owned by his uncle. (Tr. 135-37.)

Applicant and his wife have a joint checking account, but they maintain separate credit card accounts. He has three credit card accounts solely in his name, a joint account with his mother, and a joint account with his older brother. (GX 2 at 2.) Applicant maintains the joint account with his older brother to enable him to make purchases for their mother. (Tr. 130.)

The vice-president of operations for Applicant's current employer, who also directly supervised Applicant for eight months in Afghanistan, is a retired federal employee with 32 years of service in the intelligence and security fields, including 12 years in the U.S. Marine Corps and 15 years as a civilian intelligence operations specialist. He submitted a letter at the first hearing describing Applicant as the most conscientious and diligent interpreter on his staff. (AX A.) His letter included the following comments:

[Applicant] was quick to point out inconsistencies in applications, noted fabrications on official documents, and was able to recall security protocols as mandated by command policies. [Applicant] took on a personal obligation to ensure that all persons applying for [employment] were doing so legitimately and correctly. [Applicant] was responsible for identifying and effectively stopping several attempts by banned individuals trying to circumvent our security processes.

[Applicant has a high sense of patriotism to the United States. He has never tolerated anyone to speak ill of his adopted country and would be the first to squash any anti-American sentiment and would even escort the offender out the gate if so instructed.

I have watched and managed many individuals who work in the contracting world, but there are very few that are as committed as [Applicant] to the labor. He is not chasing a contractor's paycheck, he is looking after his [contractor's] family and for the greater good of the lives of those who live and work at [the military installation].

He testified at the second hearing and continued to support granting Applicant a security clearance. He testified that he ranked Applicant first among eight linguists working for him. He described Applicant as "very diligent, very studious, and exacting."

He pointed out that members of the team were vulnerable to vehicle bombs and rocket attacks, which occurred at least twice a month at irregular intervals. (Tr. 32-38.)

The current director of the project on which Applicant works has known him since October 2011. He characterized Applicant's performance as outstanding, based in part of the length of his experience on the job. He also recommended that Applicant receive a security clearance. (Tr. 40-43.)

Applicant's immediate supervisor, a fellow linguist, describes him as one of the most reliable, hardworking, trustworthy, and logical linguists on the team. He notes that Applicant makes sound judgments, follows company policies and procedures "with a positive attitude," is attentive to details, takes his responsibilities seriously, and is extremely cautious in handling confidential tasks. (AX II-B.)

One of Applicant's fellow employees during the summer and winter of 2008 testified that Applicant was dependable, straightforward, very skilled, loyal, and proud to be from the United States. He also recommended that Applicant be granted a security clearance. (Tr. at 45-49; AX II-A.)

A senior investigator who has worked with Applicant for the last four years submitted a statement describing him as dependable, professional, efficient, and extremely competent. He pointed out that on multiple occasions, Applicant was responsible for obtaining and providing information that led to the apprehension or detention of persons connected to the Taliban and anti-U.S and NATO forces. (AX B.)

Another senior investigator, who served on active duty in the U.S. Army for 24 years, worked with Applicant from May 2009 through February 2011. He states that he was initially suspicious of interpreters who were not native-born U.S. citizens, but that Applicant became his most trusted and respected employee. He considers Applicant's trustworthiness to be "beyond reproach." (AX II-C.)

Applicant's current project manager submitted a letter stating the Applicant has his "complete trust and confidence." He describes Applicant as punctual, dependable, purposeful, and transparent and forthcoming with peers, subordinates, and his supervisor. He counts on Applicant "to be the mantle of reason in a throng of haphazard opinions, and frequently, one of the few dissenting voices of moderation and restraint in a roomful of extreme viewpoints." (AX C.) At the second hearing, the same project manager submitted a document describing Applicant as "the quintessential flywheel in the interview machinery" who has been "standing the wall" for five years for his employer and NATO. (AX II-D.)

Applicant's supervisors during September-November 2005 described how Applicant went beyond his translator duties by learning the tribal culture, developing interview strategies, and creating charts and lists of words, terms, dates, and other information on the local culture and Islamic religion that could be used to identify individuals with fake documents or who were sharing documents. He often developed

force protection information simply by watching and listening to the local work force. His supervisors regarded him as “irreplaceable.” (AX E; AX F.)

Two of Applicant’s cousins worked as linguists in the same compound where Applicant worked. One of his cousins holds a top secret clearance and worked with Applicant for about six months. He testified that Applicant was highly respected by his supervisors, and he treated the Afghan citizens whom he interviewed with respect. He testified that he would “definitely recommend” Applicant for a security clearance. (Tr. 52-59.)

Applicant’s former facility security officer, retired after 24 years of service, testified at the first hearing that Applicant’s employer has continued to sponsor him for a clearance for more than three years because “[h]e’s just a very good employee.” (September 2011 Transcript at 116.) Based on Applicant’s reputation and long service with the company, he recommended “without reservation” that Applicant be granted a security clearance. (Tr. 71-73.)

Applicant has received numerous certificates of appreciation during his service as a linguist. (AX G-J.) Most recently, in June 2012, he was commended by the commander of the Expeditionary Detachment of the Air Force Office of Special Investigations for his excellent performance of duty and outstanding character. (AX II-E.)

I have taken administrative notice that Pakistan is a parliamentary federal republic with whom the United States has had diplomatic relations since 1947. Until 1990, the United States provided substantial military aid to Pakistan, but it was suspended as part of the sanctions imposed in response to Pakistan’s nuclear weapons program. After September 11, 2001, the sanctions were suspended in recognition of Pakistan’s support for the U.S. campaign against terrorism, but its record in dealing with terrorists and militants has been mixed. It has persistently pursued militants it considers dangerous to Pakistan’s interests, but it maintains its historical support of the Taliban and it considers militant groups to be important in its efforts to counter India’s military and economic advantages. Al Qaeda, Taliban, and other militant groups use the loosely-controlled border regions between Afghanistan and Pakistan as a safe haven. The leader of the Taliban operates openly in Pakistan. The former leader of al Qaeda, Osama bin Laden, was killed by U.S. forces in Pakistan in May 2011. Travel to Pakistan is dangerous for U.S. citizens, because 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 and suffers from wide-spread government corruption.

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “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 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 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).

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 that Applicant’s mother is a citizen of Pakistan, residing in Pakistan about half the time and in the United States as a registered alien about half the time (SOR ¶ 1.a). It alleges that Applicant has two brothers who are citizens and residents of Pakistan, one of whom is an officer in the Pakistani Army (SOR ¶ 1.b). It alleges that Applicant’s three sisters, one sister-in-law, one brother-in-law, and a childhood friend are citizens and residents of Pakistan; and one brother-in-law is a citizen of Pakistan residing in the United States as a registered alien (SOR ¶¶ 1.c, 1.d, 1.e, and 1.h). It alleges that Applicant will inherit property in Pakistan upon the deaths of his mother and grandmother (SOR ¶ 1.f). It alleges that Applicant has a relationship with a woman who is a citizen and resident of Kyrgyzstan and is employed in Afghanistan. Finally, it alleges that Applicant has borrowed a substantial sum of money from a cousin who is a citizen of Pakistan and has also loaned this cousin a substantial sum of money. (SOR ¶ 1.i).

The evidence outlined above and Applicant’s admissions establish SOR ¶¶ 1.a-1.d, 1.g, and 1.h. SOR ¶ 1.e is not established, because the evidence shows that Applicant’s brother-in-law is a U.S. citizen who is employed by a defense contractor and holds a security clearance. SOR ¶ 1.f is not established because the sparse evidence of record indicates that the property is owned by Applicant’s uncle who lives in Denmark. SOR ¶ 1.i is not established because the evidence shows that the cousin who borrowed money from Applicant and lent money to him is a U.S. citizen.

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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. 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 United States. 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).

Three disqualifying conditions under this guideline are relevant to this case.

AG ¶ 7(a): contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information; and

AG ¶ 7(e): a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

AG ¶¶ 7(a) and (e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The activities of al Qaeda, Taliban, and other military groups in Pakistan, the mixed record of Pakistan in dealing with these groups, and recent tensions between Pakistan and the United States arising from direct U.S. actions against terrorists are sufficient to establish the “heightened risk” in AG ¶¶ 7(a) and (e).

Where family ties to a foreign country are involved, the totality of an applicant's family ties as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). In this case, Applicant's multiple family members who are residents and citizens of Pakistan, including his brother who is an officer in the Pakistan Army, are sufficient to establish AG ¶¶ 7(a) and (b). AG ¶ 7(e) is not established, because Applicant refuted the allegation that he will inherit property in Pakistan.

The following mitigating conditions under this guideline are relevant:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

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; and

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶ 8(a) is not established. Applicant's older brother is a member of the Pakistan Army. His younger brother, three sisters, two sisters-in-law, and a brother-in-law are citizens and residents of Pakistan. His mother, with whom he has an especially close relationship, is a citizen of Pakistan and resides there about half the time.

AG ¶ 8(b) is established. Applicant's loyalty and obligation to his family members is not "minimal," but I am satisfied that he would resolve any conflict of interest in favor of the United States because of the depth of his relationships and loyalties in the United States. Even though his father was an officer in the Pakistan Army and his brother is currently serving in the Pakistan Army, Applicant renounced his Pakistani citizenship, thereby risking estrangement from his brother. He has been married for more than 13 years to a U.S. citizen. His mother, although a citizen of Pakistan, has ties to both the United States and Pakistan, because she has children in both countries. His family includes a cadre of linguists supporting U.S. interests in Afghanistan. His sister, a U.S. citizen, is married to a U.S. citizen who holds a security clearance and is deployed to Afghanistan as a linguist. His aunt and uncle, who treat Applicant as a son, are naturalized U.S. citizens, hold security clearances, and are both deployed to Afghanistan. Two cousins have become U.S. citizens, obtained security clearances, and deployed to Afghanistan.

Department Counsel did not argue that Applicant's relationship with a woman from Kyrgyzstan, alleged in SOR ¶ 1.g, had any independent security significance. Instead, Department Counsel argued that the relationship demonstrated the weakness of Applicant's marital relationship to a U.S. citizen. Applicant has repeatedly insisted that his friendship with the woman was platonic. The only evidence to the contrary is the investigator's summary of a PSI, which refers to a "romantic" relationship and Applicant's expectation that the relationship might become more serious. Applicant disagreed with the accuracy of the PSI summary in response to DOHA interrogatories, two affidavits, and at the hearing. I found his testimony, affidavits, and interrogatory responses more persuasive than the second-hand PSI summary of what the investigator thought he said. Furthermore, to the extent that the friendship may have been inappropriate, it is over. Applicant had no contact with the woman after the 11-day trip to Kyrgyzstan, and he testified that his marriage is strong.

Applicant's long-distance courtship and short-notice wedding to an older woman may have been unusual, but the question whether it was a sham marriage was resolved by U.S. immigration authorities 12 years ago. Furthermore, the strength of their marriage is shown by the facts that they lived together from May 2000 until he deployed to Afghanistan in September 2005, they have endured long separations, and they are still married after 13 years.

The Appeal Board has recognized that linguists in a combat zone should be evaluated in the context of the high-risk environment in which many of them work. The Appeal Board has stated:

As a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. 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 had made a significant contribution to the national security. The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

ISCR Case No. 06-25928 at 4 (App. Bd. Apr 9. 2008) (internal citations omitted).

The Appeal Board also has recognized that protestations of loyalty to the United States are of limited value unless an applicant has resisted indirect pressure by threats or coercion of family members in the past or "has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk

circumstances in which he made a significant contribution to the national security.” ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008).

Applicant has never held a clearance. However, he occupies a sensitive position and frequently deals with information having security significance. Investigators rely on the accuracy of his translations during interviews and his meticulous and accurate examination of documents for authenticity. He has a long track record of reliability, trustworthiness, and outstanding performance.

Applicant has served in Afghanistan for more than six years, including five months in direct combat. He decided in October 2007 that he did not desire to continue serving in direct combat. He started working for his current employer in January 2008 in a less dangerous environment, but he still serves in a combat zone, where he is vulnerable to random mortar and rocket attacks, truck bombs, and suicide bombers. He is a marked man among the “bad guys” who have been denied entry or ejected from the compound. Since September 2005, he has performed his duties accurately and diligently. He has a reputation for meticulous compliance with security procedures. As noted by his direct supervisor for eight months, he is not “chasing a contractor’s paycheck.” Instead, he safeguards his “family” of fellow contractor employees and those who live and work at the military installation where he is assigned. He has gained the respect and support of his current supervisors, who have kept him on the payroll without a clearance for over three years because of his skill and reliability.

AG ¶ 8(c) is applicable to Applicant’s occasional contacts with his extended family and his childhood friend. It is not applicable to his infrequent contacts with his two brothers or the two sisters who are not involved in caring for his mother, because he has not overcome the rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

Whole-Person Concept

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. In applying 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 relevant 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.

I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is well-educated, intelligent, and articulate. He speaks fluent English, but it is still his second language, which accounts for his inaccurate descriptions of his friendship with the woman from Kyrgyzstan. He was candid, sincere, and credible at the hearing. The testimony of senior officials who have supervised Applicant was impressive. It is rare for defense contractors to continue to sponsor an applicant for five years. The persistence of the Applicant's supervisors and their strong testimony is compelling evidence of his trustworthiness and reliability.

After weighing the disqualifying and mitigating conditions under Guideline B, evaluating all the evidence in the context of the whole person, and mindful of my obligation to decide close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on foreign influence. 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 on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a-1.i: For Applicant

Conclusion

I conclude that 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