



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 09-03086

Appearances

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

For Applicant: *Pro se*

August 23, 2010

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On November 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs), effective within the Department of Defense on September 1, 2006.

Applicant responded to the SOR on November 23, 2009, and requested a hearing. The case was assigned to me on February 3, 2010, and was initially scheduled

for hearing on February 24, 2010. The case was continued, and rescheduled for hearing on April 1, 2010. A hearing was held on the rescheduled date. At the hearing, the Government's case consisted of three exhibits (GE); Applicant relied on one witness (himself) and ten exhibits (AE). The transcript (Tr.) was received on April 9, 2010.

Besides its three exhibits, the Government requested administrative notice of seven documents covering Afghanistan: *Background Note: Afghanistan*, U.S. Department of State (November 2008); *Country Reports on Human Rights Practices-2008: Afghanistan*, U.S. Department of State (February 2009); *Country Specific Information: Afghanistan*, U.S. Department of State (March 2009); *Annual Threat Assessment of Intelligence Community*, Director of National Intelligence (January 2007); *Travel Warning: Afghanistan*, U.S. Department of State (September 2008); *Threats to American Citizens in Kabul City*, U.S. Department of State (April 2009); *Country Reports on Terrorism 2008, Chapter 5-Terrorist Safe Havens*, U.S. Department of State (April 2009); and *Country Reports on Terrorism 2008, Chapter 2-Country Reports South and Central Asia Overview*, U.S. Department of State (April 2009).

The Government also requested administrative notice of 16 documents covering Iran: *Background Note: Iran*, U.S. Department of State (September 2009); *Country Specific Information, Iran*, U.S. Department of State (October 2009); *Travel Warning, Iran*, U.S. Department of State (July 2009); *Notice: Continuation of the National Emergency with Respect to Iran*, Letter from the President to the Speaker of House of Representatives and the President of the Senate (November 2009); *Annual Threat Assessment of the Director of National Intelligence for the Senate Select Committee on Intelligence* (March 2009); *State Sponsors of Terror*, U.S. Department of State (September 2008); *Country Reports on Terrorism, Chapter 3 - State Sponsors of Terrorism*, U.S. Department of State (April 2009); *Remarks on Iran and Resolution 1737*, U.S. Department of State (December 2009); *Country Reports on Human Rights Practices - 2008, Iran*, U.S. Department of State (February 2009); *UN Calls on Iran to Address Serious Human Rights Violations*, U.S. Department of State (November 2009); *Secretary Clinton and Foreign Minister Canon Express Concern over Continued Detention of U.S. and Canadian Nationals in Iran*, U.S. Department of State (September 2009); *Robert Livinson's 1000th Day Missing*, U.S. Department of State (December 2009); *Pennsylvania Company Fined for Export Violations Involving Iran*, U.S. Department of Commerce (December 2007); *Singapore Businessman Convicted of Secretly Diverting U.S. Military and Civilian Aircraft Parts to the Islamic Republic of Iran*, U.S. Department of Commerce (May 2006); *New York Man Sentenced for Illegally Exporting Stolen NBC Night Vision Lenses for Delivery to Iran*, U.S. Department of Commerce (August 2005); and *Iranian Pleads Guilty to Attempted Exportation of Arms and Money Laundering*, U.S. Attorney's Office (April 2005).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background

reports addressing the geopolitical situations in Afghanistan and Iran. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing the current status in Afghanistan and Iran.

Procedural Issues and Rulings

Prior to the close of the hearing, the Government moved to amend subparagraph 1.a of the statement of reasons to read Applicant's mother is a citizen of Afghanistan who resides in Iran. There being no objection from Applicant, and for good cause shown, the Government's amendment was granted.

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to provide additional documentation of his professional pursuits in the U.S. For good cause shown, Applicant was granted ten days to supplement the record. The Government was afforded two days to respond. Applicant did not supplement the record.

Summary of Pleadings

Under Guideline B, Applicant is alleged in the SOR to have: (a) a mother who is a citizen and resident of Iran (see amendment, *supra*); (b) two brothers who are citizens of Afghanistan and residents of Iran; (c) a sister who is a citizen and resident of Afghanistan; (d) four sisters who are citizens of Afghanistan and residents of Iran; (e) a father-in-law and mother-in-law who are citizens and residents of Afghanistan; (f) a brother-in-law who is a citizen and resident of Afghanistan; (g) a brother-in-law who is a citizen of Afghanistan and resident of England; and h) a brother-in-law and sister-in-law who are citizens of Afghanistan and residents of Germany. Additionally, Applicant is alleged to send financial support to family members in Afghanistan and Iran.

In his response to the SOR, Applicant admitted all of the allegations. He added explanations to his admission of the allegations set forth in ¶ I. He claimed he stopped providing financial support to his family in 2007.

Findings of Fact

Applicant is a 50-year old linguist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in Afghanistan. He immigrated to Pakistan in 1998 to escape the Taliban. See GE 3; Tr. 90. He was educated in Afghanistan and earned a medical degree from an accredited Afghan university. He practiced for almost 20 years

in Afghanistan before immigrating to Pakistan in 1998 to escape the Taliban. See AE J; Tr. 89-93, 126-27.

In May 2001, Applicant immigrated to the United States (U.S.). Tr. 93, 95. After obtaining green card status in February 2004, he applied for U.S. citizenship. Tr. 129-31. Applicant was naturalized a U.S. citizen in 2008. See GEs 1 and 2; Tr. 96, 132. His wife became a naturalized U.S. citizen in 2007. Tr. 96.

Applicant married his wife in 1992, while both resided in Afghanistan. GE 1. He has three children from this marriage: ages 16, 14, and 11. GE 1; Tr. 89. Two of the children were born in Afghanistan and immigrated with Applicant and his wife, first to Pakistan, and then to the U.S. See GEs 1 and 3. His youngest child was born in Pakistan. GE 1. Applicant has no significant assets in the U.S., and no inheritance rights in Afghanistan. Tr. He intends to stay in the U.S.

In 2009, Applicant returned to Afghanistan to visit his in-laws and relatives. Tr. 134-35. Cautioned by his U.S. security office to be vigilant while in Afghanistan, Applicant was never approached by Afghanistan government agents or terrorists individuals during his two week stay. Tr. 136. Were he ever approached by suspicious Afghan individuals, Applicant would promptly report the contact to appropriate Embassy personnel. Tr. 136-37.

Applicant's mother currently resides in Iran. Tr. 90, 102. He has four sisters and two brothers who also reside in Iran. Tr. 91-92, 107-08. Before she escaped to Iran in 2000 (or thereabouts) with one of his brothers and sisters, one of his two brothers was tortured by the Taliban. Tr. 90, 105-116. The Taliban is known to attack civilians and non-combatants (including women and children). While both of his brothers currently reside in Iran, only one lives with his mother. Tr. 90-91, 108-10.

Before Applicant's mother, sisters, and brothers relocated to Iran, one of his sisters moved there with her husband. Tr. 90-91. She is a nurse and lived 15 years in Iran before she returned to Afghanistan. Tr. 92. Her husband has a physics degree and was a member of the medical faculty of an Afghanistan college before he moved to Iran. Tr. 113-14. He practiced medicine in Iran for a number of years before he returned to Afghanistan in 2005 and resumed his medical practice. Tr. 112-16. He has four other sisters who are citizens and residents of Afghanistan. See GEs 1 and 3. They relocated to Iran in late 2000 to join their mother. Tr. 117-18. Neither his mother nor any of his sisters and brothers residing in Iran have any working relationships or contacts with the Iranian government Tr. 143-44.

Applicant used to provide monthly financial support to his mother and siblings in Iran, but stopped doing so in 2007. Tr. 126, 145. The linguist position he applied for would require that he relocate to Afghanistan. Tr. 142. As a U.S. resident, Applicant does not own a home or savings account Tr. 132-33. Nor does he have any inheritance rights or other assets in the U.S. or Afghanistan. Tr. 133-34.

Besides his own brothers and sisters, Applicant has a father-in-law and mother-in-law who are citizens and residents of Afghanistan. Tr. 119-20. Additionally, he has two brothers-in-laws who are citizens and residents of Afghanistan. Tr. 120. He also has two brothers-in-law and a sister-in-law who are citizens of Afghanistan and residents of England and Germany, respectively. Tr. 121-25.

Applicant maintains bi-monthly telephone contact with his mother in Iran. GE 3; Tr. 107-08. He talks to his brothers in Iran by telephone every three months, and his sisters every six months. See GE 3; Tr. 111, 138. He maintains infrequent contact with his wife's family members, who still reside in Afghanistan. Tr. 139-40. Applicant has not had any face-to-face contact with any of his family members living overseas since 1998. See GE 3. He did return to Afghanistan for a short family visit in November 2009 to see his mother-in-law who had suffered a stroke. Tr. 135-36. Were he ever asked what kind of work he did in the U.S., he would either report the contact to U.S. law enforcement, or inform the U.S. Embassy. Tr. 136-37.

Afghanistan's country status

Afghanistan is a country in Southwestern Asia. It is sometimes referred to as the crossroads of Central Asia. See *Background Note: Afghanistan, supra*, at 2. It has had a turbulent history.

Early history

Following invasions by Alexander the Great, the Scythians, the White Huns, and the Turks, the Arabs invaded Afghanistan in 642 AD and introduced Islam. *Id.*, at 3. Arab rule held for several hundred years before giving way to the Persians who controlled the region to 998 before succumbing to the Turkic Ghasnavids. *Id.* Turkish rule under Mahmud was short-lived and was followed by attempts of various princes to rule sections of the country before the Mongol invasion of 1219 under Genghis Khan. *Id.* For many centuries following Khan's death in 1227, the country was contested by a succession of chiefs and princes. By the late 14th century, Tamerlane (a Khan descendent) incorporated Afghanistan into a vast Asian empire. *Id.*

In 1747, Ahmad Shah Durrani (the founder of what is known today as Afghanistan) established his control over most of Afghanistan. British expansion in the 19th Century was countered by Russian advances and precipitated Anglo-Afghan wars. These conflicts later led to a boundary accord that created what would become modern Afghanistan. See *Background Note: Afghanistan, supra*, at 3.

Since the British relinquished control in August 1919, Afghanistan has been an independent state. *Background Note: Afghanistan, supra*, at 2-3. Between 1919 and 1973, Afghanistan moved away from its longstanding isolation under a succession of Muslim rulers: King Amanullah (1919-1929), Nadir Khan (1929-1933), and Mohammad Zahir Shah (Nadir Khan's 19-year-old son), who ruled Afghanistan for over 40 years (1933-1973). See *Background Note: Afghanistan, supra*.

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

Following a Soviet-supported overthrow and assassination of Daoud in April 1978, a Marxist government was formed with the backing of the Soviets. *Background Note: Afghanistan, supra*, at 4. Sur Muhammad Taraki was installed as the country's president of the revolutionary council. Opposition to the Taraki government increased as many of members of Afghan elites, religious establishments, intelligentsia were imprisoned, tortured, or murdered. A revolt against the Marxist government occurred in the summer of 1978 and quickly spread into a countrywide insurgency. *Id.*

Soviet invasion

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

Afghan freedom fighters (mujahideen) who opposed the Karmal communist regime, armed with increased weapons and training assistance from the U.S. and its allies, collaborated with other Pesawar-based guerilla groups in the 1980s to destabilize the Karmal regime. The resistance movement eventually led to an agreement known as the Geneva Accords (signed by the front-line states of Pakistan and Afghanistan, the United States, and the Soviet Union). The agreement served to ensure that Soviet forces withdrew from the country as committed in February 1989. See *Background Note: Afghanistan, supra*, at 5.

Ascendency of the Taliban

By the mid-1990s, the Taliban had risen to power in reaction to the anarchy and increase of warlords in the aftermath of the withdrawal of Soviet forces. Many of the Taliban had been educated in madrassas in Pakistan with roots in rural Pashtun areas of the country. See *Background Note: Afghanistan, supra*, at 6. Beginning with its capture of Kandahar in 1994, the Taliban mounted an aggressive expansion of its control throughout Afghanistan. By the end of 1998, its forces occupied almost 90 percent of the country, and reduced its opposition largely to a small sections of the northeast and the Panjshir valley. *Id.*

Bolstered by its imposition of an extreme interpretation of Islam on the entire country, the Taliban committed massive human rights violations (particularly directed at

women and children), and committed serious atrocities against minority populations. From the mid-1990s, the Taliban provided sanctuary to Osama bin Laden, and provided a base of operations for his and other terrorist organizations. *Background Note: Afghanistan, supra*. Bin Laden and his Al-Qaida group are known to have provided financial and political support to the Taliban and Al Qaida, and acknowledged their responsibility for the September 11, 2001 terrorist attacks against the U.S.

Beginning in October 2001 (following the Taliban's refusal to expel bin Laden), the U.S. and its coalition partners initiated a military campaign, targeting terrorist facilities and Taliban military and political assets within Afghanistan. U.S. military and anti-Taliban forces routed the Taliban and caused their rapid disintegration.

After the fall of Kabul to Coalition Forces in November 2001, a UN-sponsored conference was created to restore stability and governance in Afghanistan. See *Background Note: Afghanistan, supra*. From this conference emerged a Transitional Authority headed by President Hamid Karzai. This authority (renamed the Transitional Islamic State of Afghanistan) was charged with the responsibility of drafting a constitution.

A new constitution was drafted and ratified by a constitutional loyal jirga on January 4, 2004. The Afghan constitution provides for indirect election of the National Assembly's upper house by the provincial councils and by reserved presidential appointments. On December 4, 2004, the country was renamed the Islamic Republic of Afghanistan. See *id.*; *Country Reports on Human Rights Practices-2008: Afghanistan, supra*. Hamid Karzai was sworn in as Afghanistan's President on December 7, 2004 and presided over the new government's first convened parliament in late 2005. See *Country Specific Information, Afghanistan, supra*. Presidential and provincial elections are to be coordinated by the Afghanistan Independent Election Commission (IEC), with assistance from the UN. *Id.* Challenged presidential election results in 2010 have not been widely disseminated.

Political conditions in Afghanistan

A new democratic government assumed control of Afghanistan in 2004 following a popular election. While the national government has continued to expand its authority, it has been hampered in its ability to deliver necessary social services and remains dependent on U.S.-led assistance. See *Background Note: Afghanistan, supra*, at 7. With its international community support at work, its ability to secure its borders and maintain internal order is increasing. Still, terrorists, fueled by Taliban and Al Qaida support, continue to assert power and intimidation within the country. See *Annual Threat Assessment of Intelligence Community*, Director of National Intelligence, *supra*, at 16-17. Safety and security remain key concerns because these terrorist organizations continue to target U.S. and Afghan interests by suicide operations, bombings, assassinations, car-jackings, assaults, and hostage taking. See *Country Reports on Human Rights Practices-2008: Afghanistan, supra*, at 9-10; *Country Specific Information, Afghanistan, supra*, at 2. Risks of terrorist activity remain extremely high at the present time.

Human rights conditions in Afghanistan remain poor by all reported accounts. State Department reports confirm active insurgent activity in Afghanistan. See *Country Reports on Human Rights Practices-2008: Afghanistan, supra*; No section of Afghanistan is safe or immune from violence. See *Travel Warnings, Afghanistan, supra*. Kabul, in particular, has experienced increased militant attacks in recent years, including rocket attacks, vehicle-borne IEDs, and suicide bombings. *Id.* Foreigners throughout the country continue to be targeted for violent attacks and kidnappings: some motivated by terrorism, and others by common criminal activity.

Where infrastructure is concerned, Afghanistan has still not been able to build effective, honest, and loyal provincial and district institutions and lacks a coherent tribal engagement strategy for unifying the country. See *Annual Threat Assessment of Intelligence Community, Director of National Intelligence, supra*, at 17. The Afghan drug trade remains a major source of revenue for corrupt officials, the Taliban, and other insurgent groups who conduct operations in the country. See *Country Reports on Terrorism 2008, Chapter 5-Terrorist Safe Havens, supra*, at 4.

U.S.-Afghanistan relations

Since the fall of the Taliban, the U.S. has supported the creation of a broad-based government in Afghanistan, and has made a long-term commitment to help Afghanistan reconstitute and rebuild following years of war and unstable governments. The U.S. and its coalition partners in the international community currently provide important humanitarian assistance, capacity-building, security protection, counter-narcotic programs, and infrastructure projects. The U.S. has also brought important political influence to bear on the establishment of durable democratic principles that promote the rule of law and encourage transparent and accountable forms of government. See *Background Note: Afghanistan, supra*, at 13.

The U.S. and its international partners remain committed to assisting Afghans to realize their aspirations for a stable, democratic, and economically prosperous nation. See *Background Note: Afghanistan, supra*. The U.S. is also supportive of the Afghanistan government's commitment to the protection of women's rights, human rights, and religious tolerance. *Id.*

Political and economic background of Iran

According to official U.S. State Department documents, Iran is an Islamic republic that is constitutionally constructed and has a head of state, an elected president and counsel of ministers, a legislative body composed of a 290-member Islamic consultative assembly, and a judiciary. See *Background Note on Iran, supra*, at 5. Throughout its long history, Iran has been ruled by numerous dynasties. Following a nationalist uprising against the Shah in 1905, Iran enacted a limited constitution in 1906. Two years later, oil was discovered, and Iran began its steady ascension to a modern, secularized political system. Under the reign of Reza Shah Pahlavi (an Iranian officer, who seized control of the government in 1921), Iran enacted policies of modernization and secularization,

established a central government and reasserted its authority over the tribes and provinces. See *id.*, at 3. During the Allied occupation of western Iran in 1941, the Shah was forced to abdicate and was succeeded by his son, Mohammad Reza Pahlavi. See *Background Note on Iran, id.*

Domestic turmoil swept Iran in 1978 as the result of heated religious and political opposition to the Shah's rule and political/economic programs (especially the Shah's internal security and intelligence service). And in February 1979, exiled religious leader Ayatollah Ruhollah Khomeini returned from France to direct a revolution resulting in a new, theocratic republic guided by Islamic principles. Iran's 1979 constitution allocates the duties of the chosen religious leaders and governing bodies in such a way that their duties often overlap. Legislative issues on which the Majles (Iran's legislative governing body) and the Council of Guardians (making up Iran's religious leadership) fail to agree are resolved by the Council of Expediency (a body created by Ayatollah Khomeini in 1988). Following the Ayatollah's death in June 1989, the Assembly of Experts (an elected body of senior clerics) chose the outgoing president of the republic (Ali Khamenei) to be the Ayatollah's successor as national religious leader. See *Background Note on Iran, id.*, at 4.

Iran's post-revolution has been marked by an eight-year war with Iraq, internal political struggles and unrest, and economic disorder. Its post-revolution regime has been associated with human rights violations and political turmoil, including the seizure of the U.S. Embassy in November 1979 by Iranian militants and the hostage taking of 52 Americans. See *Background Note on Iran, supra*, at 6. Succeeding power struggles have severely eroded the center and left of Iran's political institutions, leaving only the clergy. Both human rights and state sponsored terrorism remain serious problems in Iran and the Middle East. According to State Department reports, Iran's Islamic Revolutionary Guard Corps and Ministry of Intelligence and Security Forces have been directly involved in terrorist acts, and continue to support Palestinian groups with leadership cadres in Syria and Lebanese Hizballah to use terrorism in pursuit of their goals. See *Country Reports on Human Rights Practices 2008, supra*, at 1-5; *Country Reports on Terrorism, Chapter 3 - State Sponsors of Terrorism Overview, supra*, at 1-2. State Department reports claim Iranian authorities continue to provide military support and guidance to some Iraqi militant groups that target Coalition and Iraqi security forces and Iraqi civilians. See *Country Reports on Terrorism, Chapter 3 - State Sponsors of Terrorism Overview, id.*

Long estranged from the West, Khomeini's regime charted regional goals that curtail the presence of the U.S. and other outside powers in the region. Iran's Islamic foreign policy continues to stress (1) vehement anti-U.S. and anti-Israel positions, (2) elimination of outside influence in the region, (3) support for Muslim political movements abroad, (4) critical support to non-state terrorist groups, and (5) considerable increase in diplomatic contacts with developing countries. See *U.S. Dept. of State Background Note on Iran, supra*; *Iran: Country Reports on Human Rights Practices-2007, supra*, at 1-16; *Country Reports on Terrorism 2007, Chapter 3 - State Sponsors of Terrorism Overview,*

supra, at 1-2. In this vein, Iran maintains regular diplomatic and commercial relations with Russia and the former Soviet republics. Of special U.S. concern has been Russian sales of military equipment and technology to Iran. See *Background Note on Iran, id.*, at 8).

Potential obstacles to improved relations between Iran and the U.S. include Iranian efforts to acquire technology that could be used to develop nuclear weapons and other weapons of mass destruction. See *Pennsylvania Company Fined for Export Violations Involving Iran, supra*; *Singapore Businessman Convicted of Secretly Diverting U.S. Military and Civilian Aircraft Parts to the Islamic Republic of Iran, supra*; *New York Man Sentenced for Illegally Exporting Stolen NBC Night Vision Lenses for Delivery to Iran, supra*; *Iranian Pleads Guilty to Attempted Exportation of Arms and Money Laundering*, U.S. Attorney's Office, *supra*. Other barriers to better relations between the U.S. and Iran include Iran's support for and involvement in international terrorism; its support for violent opposition to the Middle East peace process; and its dismal human rights record. See *Notice: Continuation of the National Emergency with Respect to Iran*, Letter from the President to the Speaker of House of Representatives and the President of the Senate, *supra*; *Annual Threat Assessment of the Director of National Intelligence for the Senate Select Committee on Intelligence National Intelligence, supra*; *Remarks on Iran and Resolution 1737, supra*; *Secretary Clinton and Foreign Minister Canon Express Concern over Continued Detention of U.S. and Canadian Nationals in Iran, supra*; *Robert Livinson's 1000th Day Missing, supra*.

Iran's failure to "comply fully with its nuclear obligations and to cooperate fully with the I.E.A." continues to draw State Department concerns. See *Remarks on Iran and Resolution 1737, supra*. The U.S. response to Iran's problematic policies and behavior has been to try to convince Iran to abandon its nuclear weapons ambitions, cease its support of terrorist groups, and begin the process of forging constructive partnerships in the region. Looking to the future, the U.S. has made it abundantly clear to the Iranian government that Iran has an historic opportunity to restore the confidence of the international community in its nuclear intentions and provide its own people important access to technology, nuclear energy, education, and foreign investment. See *Annual Threat Assessment of the Director of National Intelligence for the Senate Select Committee on Intelligence National Intelligence, supra*. This dual track strategy of the U.S. is broad based and is designed to build cooperative relationships with Iran and promote Iran's relationship with the international community. The strategy has yet to produce any material results, and remains a work in progress.

State Department country reports cite significant restrictions on the right of citizens to change their government, summary executions (minors included), disappearances, torture and severe punishments (such as amputations and flogging), violence by vigilante groups with ties to the government, poor prison conditions, arbitrary arrest and detention (including prolonged solitary confinement), lack of judicial independence and fair public trials, political prisoners and detainees, excessive government violence in Kurdish areas and unknown groups in Arab regions of the

country, severe restrictions on civil liberties and freedom of religion, official corruption, government transparency deficiencies, legal and societal discrimination against women, ethnic and religious minorities, trafficking in persons, incitement of anti-Semitism, severe restriction of workers' rights, and child labor. See *Iran, Country Reports on Human Rights Practices-2008, supra*, at 1-24).

Addressing reports of human rights violations in Iran, the UN General Assembly adopted a human rights resolution on Iran in December 2005 that expressed serious concern at the continuing use of torture in Iran, trafficking in persons, and inhuman and degrading treatment or punishment, such as floggings and amputations, as well as public executions. See *Iran, Country Reports on Human Rights Practices-2008, supra, id.*, at 3-24).

Even though Iran's constitution prohibits arbitrary arrest and detention, these practices remain common. Its regular and paramilitary security forces that share responsibility with Iranian police for law enforcement and maintaining order are reported to have committed numerous, serious human rights abuses in recent years (see *Iran, Country Reports on Human Rights Practices-2007, Iran, supra.*). Security forces responsible for arrest and detention often do not inform family members of a prisoner's welfare and locations, and often deny visits by family members and counsel.

State Department travel warnings urge U.S. citizens to carefully consider the risks of travel to Iran (see *Travel Warning, Iran, 2009, supra*), a country with which the U.S. does not currently have diplomatic or consular relations. Citing Iran's non-recognition of dual citizenship and general declination to permit the Swiss to provide protective services for U.S. citizens who are also Iranian nationals, Americans who travel to Iran are strongly encouraged to register through the State Department's travel registration website. See *Travel Warning, Iran, 2009, id.*). Dual citizens residing or visiting in Iran are subject to all Iranian laws affecting U.S. citizens, as well as laws applicable to persons of Iranian nationality that impose special obligations on citizens of that country (see *Travel Warning, Iran, 2009, id.*; *Iran, Country Specific Information, supra*, at 1-2). Dual nationals remain subject to Iran's military service requirements and can be conscripted into service while on Iranian soil. While Iran's conscription laws would not appear to apply to Applicant or any of his family members residing in Iran, these dual citizenship laws pose some potential risk to Applicant and his family, should he ever determine to travel to Iran to visit his family.

Reports indicate, too, that Iranian security personnel may at times place foreign visitors under surveillance, and even arrest or detain Iranian-Americans suspected of "acting against national security." See *Country Reports on Human Rights 2008 supra*, at 5-6; *Iran, Country Specific Information, Iran, id.*, at 2-3. Hostage risks continue to run high in Iran. *id.*; *Secretary Clinton and Foreign Minister Canon Express Concern over Continued Detention of U.S. and Canadian Nationals in Iran, supra*. Because the Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals as Iranian citizens, regardless of their U.S. naturalization status, dual nationals who enter

Iran only on a U.S. passport risk detention absent persuasive proof of their formal renunciation or loss of their Iranian citizenship. See *Iran, Country Specific Information, Iran, supra*, at 1-2.

Endorsements and credits

Applicant is a certified on-call role player for his employer (AE C), and is credited with certificates of appreciation of his outstanding contributions to his employer's training missions. See AEs A and B. Applicant was highly regarded as well by his previous employer, where he worked for several years as a patient care technician. AE D. The director of nursing with this dialysis center described Applicant as very conscientious, knowledgeable, and professional with all of his fellow team members, patients, and their families. Applicant is credited with participation in a national community service program between September 2003 and January 2005. See AE E. Since immigrating to the U.S., Applicant has completed course work in English at an accredited institution (AEs F and G), and documents participation in a Pakistani rescue organization and an international chapter of the Red Cross. See AEs H and I.

Policies

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and all of the "[c]onditions that could mitigate security concerns," if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

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

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following 2(a) factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which

participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

The Concern: "Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under 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." See AG ¶ 6.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

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

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of

establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a respected linguist for a defense contractor who has family members who reside in Afghanistan and Iran. Trust concerns are raised under the foreign influence guideline due to Applicant’s longstanding family ties to Afghanistan, and more recently to Iran. Although his contacts with family members residing in Afghanistan appear to be limited, they do involve one sister and a host of in-laws. His Iranian contacts involve his mother and six siblings, and create considerable security concerns. Afghanistan itself is a country with a checkered history of wars, political instability, and violence. Afghanistan is also a strong ally of the U.S. and its coalition partners, who are committed to rebuilding the country. By contrast, Iran has a long and troubling history of hostility to the U.S., and is best known for its nuclear enrichment activities, poor human rights record, and reputation for hostage taking.

The Government raises security concerns over risks associated with Applicant’s mother, siblings, and his wife’s family members who are either Afghan citizens residing in Iran, England, or Germany, or are still residing in Afghanistan. Key to the Government’s foreign influence concerns are Applicant’s immediate family members who either reside in Iran or remain in Afghanistan.

Despite encouraging efforts in the development of strategic partnerships between Afghanistan and the U.S. in recent years, Afghanistan remains a war-torn country and one still in the process of establishing a stable democratic government that is able to build effective, honest, and loyal provincial and district institutions, provide effective protections for its constituent groups, and maintain cross-border security. The historically close relationship between Applicant and his immediate family members (who reside in Afghanistan and Iran) makes them potentially vulnerable to coercion and non-coercive measures.

Because Taliban and Al Qaida insurgents operating in Afghanistan have a history of violating Afghan domestic laws and regulations, as well as international laws, they are more likely to use improper and illegal means, or one of the other, to obtain classified information in Applicant’s possession or control through his family members still residing in Afghanistan. By virtue of the Iranian residency of Applicant’s mother, two brothers, and four sisters, and Applicant’s personal access to them by telephone, they, too, present potential heightened security risks covered by disqualifying condition DC ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a

foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.”

To date, none of Applicant’s family members residing in Afghanistan and Iran have any history of being subjected to any coercion or influence. These historical antecedents do limit the severity of any potential conflict situation. However, the absence of any past coercive measures taken by Afghan or Iranian authorities do not completely absolve Applicant from coercive risks in the future. Considering both countries’ protracted history of wars, political instability, violence, hostage taking, and abusive measures taken against their own citizens, they continue to present heightened security risks. For these reasons, ¶ DC 7(b), “connection to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information,” has some application to Applicant’s situation.

To be sure, none of Applicant’s immediate family members or in-laws have any identified prior affiliations or connections with any foreign governments (Afghanistan and Iran included). Any potential conflict that might be associated with his mother and siblings and his wife’s family is small and not likely to pose any conflicts of interest for Applicant in the foreseeable future.

As a nation, Afghanistan continues to be a country with emerging strategic relationships with the United States and is a front-line partner in the war on terror. Because of the security dangers that still confront U.S. and Afghan forces operating in the region, Afghanistan remains a country that presents a heightened risk. Afghanistan is also a country that is benefitting from long-term U.S. commitments to help the Afghan government and its tribal regions reconstitute and rebuild their institutions and infrastructure in the aftermath of years of war, human rights abuses, and political and economic mismanagement under Soviet-backed regimes and Taliban rule. Given the current geopolitical infrastructure that exists in Afghanistan, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant’s can be characterized as somewhat reduced, commensurate with improved security and political conditions on the ground in the country.

Conditions in Iran, though, require more vigilance. Iran has long been known to be a repressive country, which has committed numerous, serious human rights abuses in recent years, and shown little respect for the rule of law. The U.S. has no diplomatic relations with Iran. Iran remains a country on the State Department’s state terrorist list, and is a country with a known history of hostage taking and human rights abuses of wide magnitude and scope. Iran is consistently characterized as a country hostile to American political and security interests since the 1979 fall of the Shah of Iran and ensuing establishment of an Islamic republic with close ties and support to non-state terrorist groups. Based on reported terrorist activities in the country and in other countries in the region with support links to Iran, Iran cannot be deemed to

provide an acceptable political and security environment for managing hostage risks. Without such assurances, no reasonable conclusions can be reached that Applicant's mother and siblings are not in a position to be exploited by Iranian authorities.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Afghanistan and Iran. Unlike the old AGs, the new ones do take into account of the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

Applicant's situation is a special one for reasons that pertain wholly to his unique status and circumstances. Although he comes to these proceedings with considerable medical background and language proficiency, he only became a naturalized U.S. citizen in 2008, and still has close family members residing in both Iran and Afghanistan. So, even though he has been careful to date to avoid any frequent contact with his family members in Afghanistan, he maintains regular contact with his mother, and to a lesser extent some of his siblings in Iran.

In special circumstances involving linguists who put themselves in harm's way by working in unstable countries where they have family members residing, the Appeal Board has been quick to note that such individuals are more likely to recognize, resist, and report any attempts to 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). Applicant's strong connections to his mother and siblings residing in Iran makes it problematic to resolve any potential conflict against his U.S. interests, his stated linguistic contributions to the U.S. notwithstanding. .

Based on Applicant's case-specific circumstances, MC 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S." is not available to Applicant. Neither Applicant nor his mother and siblings residing in Iran can be characterized as sufficiently insulated from potential pressures and influence from the Iranian government and its military and intelligence officials to warrant application of this mitigating condition.

Of some benefit to Applicant, too, is MC ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person,

group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant’s demonstrated loyalty, patriotism, and professional commitments to the U.S. is exhibited in the two-plus years he has held U.S. citizenship.

One other mitigating condition has mixed application to Applicant’s situation. MC 8(e), “the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country,” has some prospective value based on Applicant’s assurances of reporting his travel plans to Iran. But there is really no documented record of Applicant’s prior reporting of his contacts with his family members in Afghanistan or Iran since he acquired U.S. citizenship. Consistent with past Appeal Board considerations, his future commitments alone do not warrant any more than minimal consideration at this time. Historically, the Appeal Board has accorded very little weight to stated intentions to take corrective steps in a hypothetical set of circumstances, absent record evidence that an applicant has acted similarly under comparable circumstances. See ISCR Case No. 07-00029, at 4 (App. Bd. Dec. 7, 2007); ISCR Case No. 06-24575, at 4 (App. Bd. Nov. 9, 2007).

The strategic importance of Afghanistan and high level of resources the U.S. has invested in Afghanistan to improve the country’s governance, infrastructure, and security are entitled to considerable weight. And were Applicant’s family connections limited to Afghanistan, security concerns might be reconciled. But Applicant’s mother and siblings have chosen to make Iran their residence for reasons not fully explored. Given that Iran remains a hostile country with no diplomatic relations with the U.S., and one that lacks a secure infrastructure and track record for respecting human rights and the rule of law, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant’s cannot be safely discounted. Iran’s strategic location and political character and the residency of his mother and siblings in Iran, all combine to create security concerns over risks of direct or indirect pressure or influence of a family member of Applicant’s by Iranian authorities.

To complete a whole-person assessment of Applicant’s foreign influence risks to ascertain whether they are fully compatible with minimum security clearance eligibility requirements, Applicant’s medical and charitable contributions in the U.S. require careful balancing with the raised security concerns. His endorsements, training certificates, and cited contributions to the private health and charitable organizations he has worked with in the past are commendable.

Whole-person assessment is available to partially minimize Applicant’s exposure to conflicts of interests with his Afghan family members. But such an assessment cannot reduce the heightened security risks of coercion, pressure, or influence that any of his family members might be exposed to in Iran. After carefully considering Applicant’s familial connections in the U.S. and Iran and the risks of

Applicant's submission to Iranian pressures should his mother and siblings residing there be pressured or coerced by Iranian authorities at some time in the foreseeable future, the weighted risks of a compromise remain too substantial to become manageable ones at this time under a whole person assessment of all of the critical circumstances considered in this case. Overall, any potential security concerns attributable to Applicant's relations with his mother and siblings residing in Iran are insufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to the status of his mother, two brothers, and four sisters who reside in Iran. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a, 1.b, and 1.d of Guideline B. Favorable conclusions are warranted with respect to sub-paragraphs 1.c and 1.e through 1.i.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in AG ¶ 2(a).

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B (FOREIGN INFLUENCE):	AGAINST APPLICANT
Subpara. 1.a	Against Applicant
Subpara. 1.b:	Against Applicant
Subpara. 1.c:	For Applicant
Subpara. 1.d:	Against Applicant
Subpara. 1.e:	For Applicant
Subpara. 1.f:	For Applicant
Subpara. 1.g:	For Applicant
Subpara. 1.h	For Applicant
Subpara. 1.i:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Clearance is denied.

Roger C. Wesley
Administrative Judge

