



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 09-04954
)
Applicant for Security Clearance)

Appearances

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

April 19, 2011

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline B (foreign influence). Clearance is granted.

Statement of the Case

On March 19, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On May 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (foreign influence) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs after September 1, 2006.

Applicant answered the SOR on May 28, 2010, and DOHA received Applicant's answer on June 2, 2010. Department Counsel was prepared to proceed on July 31, 2010. The case was assigned to two previous administrative judges on August 6,

2010 and September 3, 2010, respectively, and was assigned to me on September 10, 2010. DOHA issued a notice of video teleconference hearing on August 30, 2010 scheduling the case to be heard on September 9, 2010. On September 8, 2010, DOHA issued a notice of hearing cancelling the video teleconference. On September 10, 2010, DOHA issued a notice of hearing scheduling the hearing for September 14, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 4, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through P, which were received without objection, and she testified on her own behalf. DOHA received the hearing transcript (Tr.) on September 22, 2010.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel requested administrative notice of facts concerning Afghanistan. Department Counsel provided supporting documents to show detail and context for those facts. Applicant did not object, and I granted Department Counsel's request. (Tr. 15-19, Exhibit I(1-8).)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact

Applicant admitted all of the allegations in the SOR. Her admissions are incorporated as findings of fact.

Background Information

Applicant is a 56-year-old linguist, who has been employed by a defense contractor since March 2009. She is currently deployed to Afghanistan. Applicant speaks three languages – Pashtun, Farsi, and English. After completing a counterintelligence screening in March 2009, she was granted an interim secret security clearance. (GE 1, GE 4, AE I, Tr. 68, 75-77.)

Foreign Influence

Applicant comes from a large Afghan family. Her parents, six brothers, and two sisters, as well as Applicant, were all born and educated in Afghanistan. Her father was a prominent local politician and land owner. Her mother was a homemaker. Applicant's father died in Afghanistan in 1984. (GE 4.)

Applicant's immediate family are dispersed throughout the United States, Canada, Europe, and Afghanistan with the vast majority of them residing in the United States. She married in January 1974 and divorced in December 1984. She had three daughters and one son born during her marriage. Applicant is unsure of her former husband's whereabouts. She attended a teaching academy and received the equivalent of an associate's degree in Afghanistan, and for a brief period, she taught at an Afghan middle school. (Tr. 23-24, 26-30.)

In December 1982, Applicant and her four children immigrated to the United States. (GE 4, Tr. 23-24, 31, 90-91.) After arriving in the United States, she attended cosmetology school from June 1983 to September 1984 and received a certificate in cosmetology. Applicant later attended a community college from September 1987 to September 1989 and received a certificate in hotel and restaurant management. (GE 4, Tr. 25-26.) Applicant became a naturalized U.S. citizen in August 1992 and was issued her most recent U.S. passport in February 2009. (GE 1, GE 4, AE H.) Before becoming a linguist, Applicant worked as a successful hair stylist in a major metropolitan area with photographs of her work in major national magazines. (GE 3, GE 4, AE G.)

Following, is a summary of Applicant's immediate family members with comments as appropriate:¹

Mother – She is 92 years old and is a citizen and resident of the United States. She lives on social security and additional support provided by Applicant and her siblings. Applicant's mother remained a homemaker after arriving in the United States. Applicant speaks to her mother daily. (GE 4, Tr. 31-32.)

B-1 – He, his wife, and four children, are citizens and residents of the Netherlands. B-1 is an artist and a school librarian. B-1's wife is a teacher's aide. Applicant speaks to him by telephone "[o]nce a year, twice a year, not too much." (GE 4, Tr. 32-36.)

B-2 – He is a citizen and resident of the United States, as are his wife and four children. He is also a linguist and is employed by the same company as Applicant. Before becoming a linguist, B-2 was employed as a car salesman and restaurateur. B-

¹ Applicant's brothers are depicted as "B," her sisters are depicted as "S," her daughters are depicted as "D," her mother as "mother," and her only son is depicted as "Son." Groups exceeding one are followed by their order of seniority with an Arabic number. *E.g.* Applicant's oldest brother is depicted as "B-1."

2's wife works in a bank. Applicant speaks to B-2 every three months. (GE 4, Tr. 35-39.)

B-3 – He is a citizen and resident of the United States. He is also a linguist and is employed by the same company as Applicant. Before becoming a linguist, B-3 owed a cleaning company. He was married and has a daughter, but Applicant is unsure of the whereabouts or status of her former sister-in-law or niece. Applicant speaks to B-3 once every three months. (GE 4, Tr. 39-43.)

B-4 – He is a citizen and resident of the United States, as are his wife and four children. He worked as a restaurateur before retiring. Before moving to the United States, B-4 was employed as a pilot for an Afghan airline company. His wife was a teacher in Afghanistan, but has been a homemaker since moving to the United States. Applicant speaks to B-4 once a year. (GE 4, Tr. 43-46.)

B-5 – He is a resident of Canada, as are his wife and two daughters. Applicant was uncertain of their citizenship. His wife and two daughters live with him in Canada. B-5 owns a cleaning company in Canada. Applicant speaks to B-5 once a year. (GE 4, Tr. 47-50.)

B-6 – He is a resident and citizen of Canada, as are his wife and two children. He owned a car rental company before retiring. It has been “more than five years” since Applicant spoke to B-6. (GE 4, Tr. 50-53.)

S-1 – She is a resident and citizen of the United States, as are her husband and two sons. She is also a linguist and is employed by the same company as Applicant. Before becoming a linguist, S-1 was a hair stylist. Her husband is a taxi driver. Applicant speaks to S-1 once a week. (GE 4, Tr. 60-61.) In the May–April 2002 timeframe, Applicant traveled to Pakistan with her sister for nine days in an attempt to locate their nephew. They were unable to locate him. (GE 3.)

S-2 – She is a resident and citizen of Germany. Applicant thought that S-2 worked in a clothing-related occupation, but is unsure of her occupation today. S-2's husband was killed while serving in the Afghan Army during the Afghanistan-USSR War. S-2 also had a daughter, who died during the war in Afghanistan. Applicant speaks to S-2 maybe once a year. (GE 4, Tr. 61-63.)

Son – He is a resident of the United States with a pending application to become a U.S. citizen. He currently is a citizen of Afghanistan. Applicant's son works in a bank and is unmarried. She speaks to her son once a week. (GE 4, Tr. 53-54.)

D-1 – She is a resident of the United States with a pending application to become a U.S. citizen. She is currently a citizen of Afghanistan. D-1 works in a hair salon and lives near the Applicant. D-1 is married and her husband is a citizen of Afghanistan and is employed by the German Embassy in Afghanistan. Applicant

speaks to D-1 every day. Applicant traveled to Afghanistan with D-2 in 2008 to attend her wedding. (GE 4, Tr. 54-59.)

D-2 – She is a resident and citizen of the United States. D-2 is a registered nurse and worked in a hospital. D-2 is in the process of becoming a linguist in Afghanistan like her mother. She is separated from her husband and is pending a divorce. Her estranged husband is an Afghan citizen (Applicant's son-in-law) and lives in the United States. D-2 has a son. Applicant speaks to D-2 once a day. (GE 4, Tr. 63-65.)

D-3 – She is a resident and citizen of the United States. D-3 is a hair stylist and works at the same salon as D-1. D-3 is unmarried and has a son. Applicant speaks to D-3 once a day. (GE 4, Tr. 64-66.)

Applicant was previously deployed to Afghanistan from July 2009 to August 2010. Her duties included accompanying U.S. Army Special Forces serving as an interpreter in the field and later at a U.S. military hospital in Afghanistan. During this deployment, she came under periodic fire while accompanying Special Forces, was surrounded by the Taliban for a three-week period, and as a female interpreter had a large bounty placed on her by the Taliban. (Tr. 74-81.)

At the time of the hearing, Applicant had two brothers, a sister, and a nephew serving as linguists in Afghanistan, and all were employed by the same defense contractor. Her nephew is the son of B-4. Also, Applicant's daughter (D-2) is in training to be a linguist and will be joining her mother and the rest of the family in Afghanistan. (Tr. 72-74.) Applicant returned to the United States from her deployment to Afghanistan for her hearing, and then redeployed back to Afghanistan immediately after her hearing. At the time of the hearing, Applicant had received notification that she would be assigned as a linguist to a U.S. Army Judge Advocate in Afghanistan. (Tr. 88, 90.)

Applicant does not own any real property in the United States. She conducts all of her banking in the United States, is registered to vote in the United States, and exercises all of her rights of U.S. citizenship. (Tr. 67, 82-83.) Applicant testified that although she was born in Afghanistan, she considers the United States to be her home. (Tr. 70, 83.)

Character Evidence

Applicant submitted numerous reference letters to include a letter from her community college instructor. Most notable were reference letters and various awards from military personnel that Applicant served with during her 2009 to 2010 deployment to Afghanistan. Senior medical staff and combat personnel, who worked with her in Afghanistan, commended her competency, dependability, and compassion. Applicant's submitted two certificates of appreciation from military commanders for her exceptional performance as a linguist. (AE A – O). She also submitted excerpts from a

prominent and nationally recognized bride's magazine with examples of her success as a hair dresser. (AE P.)

Afghanistan

Afghanistan is a country in Southwestern Asia. It is approximately the size of Texas (249,935 square miles). Pakistan borders it on the east and the south. Iran borders it on the west and Russia to the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. In 2009, the population was about 28 million people with about 3,000,000 Afghans living outside Afghanistan.

Afghanistan is presently an Islamic Republic with a democratically elected president. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union withdrew from the country, fighting continued among the various ethnic, clan and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic government took power in 2004 after a popular election. Despite that election, terrorists, including al-Qaida and the Taliban, continue to assert power and intimidation within the country. Safety and security are key issues because these terrorist organizations target United States and Afghan interests by suicide operations, bombings, assassinations, car-jackings, assaults, or hostage takings. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. According to recent reports from the U.S. Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. Travel warnings are ongoing. No section of Afghanistan is safe or immune from violence.

The United States-Afghan relationship is summarized as follows:

After the fall of the Taliban, the U.S. supported the emergence of a broad-based government, representative of all Afghans, and actively encouraged a [United Nations] role in the national reconciliation process in Afghanistan. The U.S. has made a long-term commitment to help Afghanistan rebuild itself after years of war. The U.S. and others in the international community currently provide resources and expertise to Afghanistan in a variety of areas, including humanitarian relief and assistance, capacity-building, security needs, counter-narcotic programs, and infrastructure projects.

During his December 1, 2009 speech at West Point, President Barack Obama laid down the core of U.S. goals in Afghanistan, which are to disrupt, dismantle, and defeat al-Qaeda and its safe havens in Pakistan,

and to prevent their return to Afghanistan. . . . The United States is willing to support fully the ambitious agenda set out by the recently re-elected Afghan president, focusing on reintegration, economic development, improving relations with Afghanistan regional partners, and steadily increasing the security responsibilities of the Afghan security forces.

U.S. Department of State, *Background Note: Afghanistan*, Mar. 26, 2010 (HE 4, enclosure I at 13). The United States has more combat troops deployed to Afghanistan than to any other foreign country. This extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to citizens and residents of Afghanistan.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s 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 to reach his decision.

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline B (foreign influence).

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a), 7(b), and 7(d) apply. Applicant, her children, her parents and siblings, and several of her in-laws were all born in Afghanistan. Two of her children, although they have pending applications to become U.S. citizens, are and remain citizens of Afghanistan. Applicant's son-in-law, who is married to D-2, is an Afghan citizen and is employed by the German Embassy in Afghanistan. Applicant has four siblings who are residents and citizens of countries such as the Netherlands, Canada, and Germany. According to Applicant's March 2009, D-2 (non-citizen daughter) lives with Applicant. She has contact with all of her siblings in varying degrees and frequent contact with D-2 whose husband is a citizen of and current resident of Afghanistan. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption. Applicant's relationship with her daughter, and through her to her son-in-law in Afghanistan, creates "a heightened risk of foreign inducement, manipulation, pressure, or coercion."

The mere possession of close family ties with a family member living in Afghanistan, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 or inducement. 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 collection operations against the United States. The relationship of Afghanistan with the United States,

places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that her relationships with her family members living in Afghanistan do not pose a security risk. Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to assist a family member living in Afghanistan.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from Afghanistan seek or have sought classified or economic information from or through Applicant or her family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Afghanistan has an enormous problem with terrorism. Applicant’s relationship with family members living in Afghanistan creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist family members in Afghanistan by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant’s contacts with her son-in-law vis-à-vis D-2 and has raised the issue of potential foreign pressure or attempted exploitation. Also, there is some overlap of Applicant’s immediate family members serving as linguists in Afghanistan at the same time. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant visited Afghanistan in 2008 to attend D-2's wedding. D-2's husband (Applicant's son-in-law) is a citizen and resident of Afghanistan. Applicant has frequent contact with D-2 and presumably has some contact with her son-in-law. She, along with several family members, are serving as linguists in Afghanistan. Because of these connections to Afghanistan, Applicant is not able to fully meet her burden of showing there is "little likelihood that [her relationships with her relatives who are Afghanistan citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established that "[she] can be expected to resolve any conflict of interest in favor of the U.S. interest." In 1982, Applicant and her four children emigrated from Afghanistan to the United States. Applicant attended cosmetology school and community college in the United States and became a U.S. citizen in 1992. Two of her four children as well as her mother are naturalized U.S. citizens. Her other two children have pending applications to become U.S. citizens. Most importantly, Applicant wants a clearance so that she can again assist U.S. Armed Forces in Afghanistan in a combat zone. She has risked her life to support United States' goals in Afghanistan. She has shown her patriotism, loyalty, and fidelity to the United States. Applicant has already served with distinction while serving as a linguist in support of U.S. Armed Forces from 2009 to 2010.

Applicant has strong family connections to the United States. Her four children, her mother, three of her six brothers and one of her two sisters all reside in the United States. With the exception of two of her children, her mother and her siblings residing

in the United States are all U.S. citizens. Currently, Applicant is among five family members serving as linguists in Afghanistan.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with her son-in-law living in Afghanistan and other family members who are serving as linguists in Afghanistan. There is no evidence, however, that terrorists, criminals, the Afghan Government, or those conducting espionage have approached or threatened Applicant or her family in Afghanistan to coerce Applicant or her family for classified or sensitive information.² Applicant and her family serving in Afghanistan are clearly targets for improper coercion, exploitation, and violence.

It is important to be mindful of the United States' huge investment of manpower and money in Afghanistan, and Applicant and as well as her other family members, who are linguists working for the U.S. Government, have and are supporting U.S. goals and objectives in Afghanistan. Applicant, her family members serving as linguists in Afghanistan, and her son-in-law are potential targets of terrorists and the Taliban for their own activities and support for the United States, and Applicant's potential access to classified information is unlikely to add significantly to the risk they already face from lawless elements in Afghanistan.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Afghanistan. Applicant is not required to report her contacts with family members living in Afghanistan.

AG ¶ 8(f) has limited application because there is no evidence that Applicant has any interest in property or bank accounts in Afghanistan. However, this mitigating condition can only fully mitigate the disqualifying condition under AG ¶ 7(e), which provides, "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." All of Applicant's assets are in the United States.

In sum, Applicant's connections to family living in Afghanistan are less substantial than her strong connections and ties to the United States. Her past and present personal risk as a translator and linguist serving with U.S. combat forces in Afghanistan is greater than the risk her son-in-law (working for the German Embassy) and linguist family members face during their service in Afghanistan. Her connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B.

² There would be little reason for U.S. enemies to seek classified information from Applicant because she has not had access to such information.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guideline B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting a foreign influence security concern because of Applicant's connections to Afghanistan. Applicant, her parents, brothers, sisters, and children were all born in Afghanistan. D-2 married an Afghan citizen, who remains in Afghanistan, as an employee of the German Embassy. Two of Applicant's children are Afghan citizens. Applicant traveled to Afghanistan in 2008 to attend D-2's wedding. She also went to Pakistan in 2002 with her sister in search of a nephew they were unable to locate. Applicant and four of her family members are serving as linguists in Afghanistan.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there.³ Afghanistan is a dangerous place because of violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the Afghan Government, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. Applicant recognizes her work with the U.S. Armed Forces will endanger her and expose her to considerable risk. The United States and Afghan Governments are allies in the war on terrorism. The United States is committed to the establishment of a free and independent Afghan Government. Afghanistan and the United States have close relationships in diplomacy and trade.

³ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

The circumstances tending to support approval of a clearance for Applicant are more substantial than the factors weighing towards denial of her clearance. Since 1982, Applicant has made the United States her home for her and her family. She has embraced her life in the United States, taken advantage of educational opportunities, and has enjoyed a successful career as a hair stylist in a major metropolitan area. Applicant's closest family members to include her mother and four children live in the United States. Her children have pursued successful careers in the United States. Applicant has substantially greater contacts or connections with the United States than with Afghanistan. Applicant does not own property in Afghanistan. When she was naturalized as a U.S. citizen, she swore allegiance to the United States.

Applicant has returned again to Afghanistan where she is serving with U.S. Armed Forces as a linguist and translator. She is willing to risk her life, as she did before from 2009 to 2010, as part of her duties on behalf of the U.S. combat forces in Afghanistan. She is fully aware of the risks to herself, and she is also aware that other family members serving as linguists in Afghanistan are at risk from terrorists and the Taliban. All these circumstances demonstrate that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit her. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's strong connections to the United States and especially to her U.S. family, community, and her desire for employment as a translator in a combat zone establish "such deep and longstanding relationships and loyalties in the U.S., [she] can be expected to resolve any conflict of interest in favor of the U.S. interest." See Discussion of AG ¶ 8(b), *supra* at pages 11-12.

After weighing all the facts and circumstances in this decision, including Applicant's demeanor and sincerity at her hearing, I find her statements to be credible, and I conclude she has carried her burden of mitigating the foreign influence security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole-person factors"⁴ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated the Government's case. For the reasons stated, I conclude she is eligible for access to classified information.

⁴See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1a to 1f: For Applicant

Conclusion

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

Robert J. Tuidor
Administrative Judge