



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-06457

Appearances

For Government: Fahryn E. Hoffman, Department Counsel
For Applicant: *Pro se*

January 31, 2011

Decision

HARVEY, Mark, Administrative Judge:

In 1969, Applicant was born in Afghanistan. In 1983, his father brought him to the United States, and in 1993, he became a U.S. citizen. His spouse, three children, father, mother, three sisters, and three brothers are U.S. citizens. Applicant wishes to return to Afghanistan, and assist U.S. combat forces as a translator and linguist. In 2003, Applicant's father returned to Afghanistan and has remained there. His father holds a high-level position in the Afghan Government. Applicant and his father have a close relationship. Applicant understands the risks and dangers to himself from service in the field with U.S. combat troops. He has significantly greater contacts with the United States than with Afghanistan. He can be expected to resolve any conflict of interest in favor of U.S. interests. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On January 22, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF-86) (Government Exhibit (GE) 1). On August 31, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence)

(Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR and requested a hearing before an administrative judge. (HE 3) On November 12, 2010, Department Counsel was prepared to proceed. On November 16, 2010, DOHA assigned the case to me. On November 30, 2010, DOHA issued a hearing notice (HE 1). On December 13, 2010, the hearing was held. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 18), and Applicant offered five documents (AE A-E). (Tr. 19-22) There were no objections, and I admitted GE 1-3 and AE A-E. (Tr. 22) I received the transcript of the hearing on December 28, 2010.

Procedural Ruling

Department Counsel requested administrative notice (AN) of facts concerning Afghanistan. (Tr. 13-14; HE 4, AN Request) Department Counsel provided supporting documents to show detail and context for those facts. (HE 4, Ex. I to VII) Applicant did not object, and I granted Department Counsel's request. (Tr. 14)

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 Fact¹

Applicant's response to the SOR admitted, in part, the allegations in ¶¶ 1.a and 1.d, and all of the allegations in 1.b and 1.c. (HE 3). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹The facts in this decision do not specifically describe employment, names of witnesses, names of other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Applicant is a 41-year-old employee of a government contractor who is seeking a security clearance (Tr. 6). He was born in Afghanistan, and he graduated from a U.S. high school in 1989. (Tr. 6) In 1996, he was awarded a bachelor's degree in general science from a major U.S. university. (Tr. 7) He has also attended community college and has earned an associate's degree in computer networking. (Tr. 7) He has never served in the U.S. military. (Tr. 71) He is an instructor for military personnel in several languages widely spoken in Afghanistan. (Tr. 23) He received a commendation about his work as a foreign language instructor. (Tr. 23-24; AE B) His work as a language instructor was lauded, and the Dean of the department of a major U.S. university lauded his hard work, positive attitude, and ability to work with others. (AE D) A supervisor at his former employment cited Applicant's initiative, creativity, diligence, and ability to obtain excellent results. (AE E)

Applicant requires a security clearance so that he can be a linguist or translator for U.S. forces in Afghanistan. (Tr. 25) He has completed the preparatory training for deployment to Afghanistan at Fort Benning, and he is familiar with the risks and dangers of being a translator in Afghanistan. (Tr. 73)

Applicant married in 1994. (Tr. 39) His spouse was born in Afghanistan and became a U.S. citizen in approximately 1999. (Tr. 40, 70) They have three children, who are ages 7, 12, and 15. (Tr. 41, 70) His children were born in the United States and live in the United States. (Tr. 41) All of Applicant's siblings, three brothers and three sisters, live in the United States. (Tr. 42)

Foreign Influence

In the early 1980s, Applicant's father had a mid-level government position in Afghanistan and was worried about being arrested by the Soviets or their supporters. (Tr. 27; GE 2 at 2) He previously worked in Afghanistan in academics. (Tr. 46) When Applicant was 12 or 13 years old, he and his family left Afghanistan and went to Pakistan. (Tr. 26; GE 2 at 3) His family lived in Pakistan for approximately 14 months, and then they moved to the United States. (Tr. 26; GE 2 at 4) Applicant's father left the family and went to Kuwait for about two years, and then he returned to the United States. (Tr. 66) Applicant's father became a U.S. citizen in approximately 1988. (Tr. 43; GE 2 at 3) His mother also became a U.S. citizen. (GE 2 at 3) Applicant became a U.S. citizen in 1993. (Tr. 22)

Applicant's father returned to Afghanistan in 2003, and served as a high-level advisor to the Afghan Government. (Tr. 45; GE 2 at 3) He recently completed a four-year term as a high-level Afghan Government official. (Tr. 43-45, 52) After that term ended in January 2010, he received a temporary extension until a replacement is selected. (Tr. 43; GE 2 at 7) Applicant is unsure when his father will be replaced or what his father will do when he is replaced. (Tr. 43-46, 52-53)

Applicant does not own any property outside of the United States. (Tr. 37) He owns three houses in the United States. (Tr. 28) He lives in one residence and rents out the other two. (Tr. 28, 31) His residence was purchased two years ago as a foreclosure

for \$260,000, and Applicant estimated the value to be about \$410,000. (Tr. 28, 34) His residence is not encumbered with a mortgage because his father paid off the mortgage in 2009. (Tr. 28-31) Applicant's father has provided thousands of dollars to Applicant over the last ten years because Applicant was unemployed, had medical problems, or needed help with his mortgage. (GE 2 at 10) Applicant's brother lives in one of the houses Applicant owns. (Tr. 31) The two rental properties have mortgages. (Tr. 32-33) The total value of the two rental homes is about \$265,000. (Tr. 31-34) Applicant hopes to pay his father back; however, he is not legally obligated to do so. (Tr. 36)

Applicant has a U.S. passport. (Tr. 66) He has never had an Afghan passport. (Tr. 66)

Applicant has three brothers and three sisters, who live in the United States. (Tr. 33; GE 2 at 3) The three brothers have four rental homes in the United States. (Tr. 33)

Applicant's father has a real estate and construction business in Afghanistan. (Tr. 35-36) When Applicant visited Afghanistan in November 2006, he stayed with his father in his apartment, which is rented by the Afghan Government for his use. (Tr. 38) Applicant had not been to Afghanistan since leaving in the 1990s. (Tr. 47, 65) The apartment has guards and Applicant conceded his father's position increases the risk to Applicant while Applicant is in Afghanistan. (Tr. 47-48)

Applicant's mother travels to Afghanistan for a few months each year to visit her husband. (Tr. 56) Applicant's mother was in Afghanistan from August 2010 to January 2011. (Tr. 55) Applicant frequently communicates with her. (Tr. 55) Applicant communicates with his father about three or four times per year. (Tr. 55; GE 2 at 5)

Applicant's spouse has four brothers and two sisters. (Tr. 57) Her brothers' occupations are: private security guard, employee of a radio station, accountant for a telephone company, and taxi driver. (Tr. 57-60; GE 3 at 10-11) Three of his spouse's brothers live in Afghanistan, and one of her brothers lives in the United Kingdom. (Tr. 57-60; GE 2 at 4; GE 3 at 10-11) One of his spouse's sisters is a teacher, and one is a housewife. (Tr. 61, 66-67; GE 3 at 10-11) One of his spouse's sisters lives in Afghanistan, and one lives in Pakistan. (Tr. 62; GE 3 at 10-11) All of his spouse's siblings are married, and all except one of her siblings have children. (Tr. 57-63) None of his spouse's siblings or their spouses have military experience, and none work for the Afghan Government. (Tr. 57-63) Some of his spouse's siblings are attempting to move to the United States; however, they are not being sponsored by Applicant or his spouse. (Tr. 62) Applicant does not communicate with his spouse's relatives in Afghanistan; however, his spouse communicates with her siblings or in-laws approximately every month. (Tr. 64; GE 2 at 9)

Applicant's sister's spouse is a linguist for a high-level U.S. Army General serving in Afghanistan. (Tr. 48, 68) He is a U.S. Government employee. (Tr. 69) However, Applicant is not that close to his sister's spouse. (Tr. 69) Applicant's older brother works for a U.S. Government contractor in Afghanistan. (Tr. 63)

Applicant's mother's brother lives in Afghanistan, and he is a brick layer or stone mason. (Tr. 53-54) Applicant's cousin is a farmer. (Tr. 54) He communicates with them about twice a year. (Tr. 55)

Applicant believes he relinquished his Afghan citizenship when he became a U.S. citizen. (Tr. 49) He did not send any documentation to the Afghan Government renouncing his Afghan citizenship. (Tr. 50) He promised that he would investigate the process for renouncing his Afghan citizenship, and then he would work on renouncing it. (Tr. 50-51)

Applicant believes that he will be in greater danger in Afghanistan than his father. (Tr. 73) He believes that combat units defend and protect their translators. (Tr. 73)

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-jacking, assaults, or hostage taking. 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 U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation

about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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) and 7(b) apply. Applicant, his father, mother, brothers, sisters, and spouse were all born in Afghanistan. He has frequent contact with his father and mother, and is close to them. His father has provided thousands of dollars of assistance to Applicant over the last ten years. Furthermore, his father purchased Applicant's residence, which cost about \$260,000. His father has connections to the United States and is prominent in the Afghan Government. His father is a probable high-value target of terrorists and the Taliban. Although thousands of U.S. and coalition armed forces and civilian contractors serving in Afghanistan are also targets, his father is well protected due to his high-level position in the Afghan Government. Applicant visited his father in Afghanistan in 2006. Applicant's mother visits her spouse in Afghanistan for several months each year. Applicant communicates with her, and she is also a target for terrorists and the Taliban.

Applicant and his wife share living quarters. She frequently communicates with her brothers and sisters living in 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 spouse's relationships with her siblings in Afghanistan create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" and AG ¶ 7(d) applies.

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 his relationships with his family members living in Afghanistan do not pose a security risk. Applicant should not be placed into a position where he 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).

There is no evidence that intelligence operatives from Afghanistan seek or have sought classified or economic information from or through Applicant or his 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 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 a possible desire to assist family members in Afghanistan by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his parents and his spouse's contacts with her siblings and has raised the issue of potential foreign pressure or attempted exploitation. 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 2006. Applicant has frequent contact with his parents. His father lives in Afghanistan, and his mother frequently visits Afghanistan and stays there for extended periods. His father has a high profile in Afghanistan because of his important Afghan Government position. Because of his connections to Afghanistan, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his 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 "[he] can be expected to resolve any conflict of interest in favor of the U.S. interest." In 1983, Applicant's father emigrated from Afghanistan to Pakistan and then to the United States because of threats to the family's safety. Applicant attended high school in the United States and became a U.S. citizen in 1993. His spouse is a U.S. citizen, and his three children were born in the United States. Most importantly, Applicant wants a clearance so that he can assist U.S. Armed Forces in Afghanistan in a combat zone. He has offered to risk his life to support United States' goals in Afghanistan. He has shown his patriotism, loyalty, and fidelity to the United States.

Applicant has strong family connections to the United States. His wife, three children, mother, father, three sisters, and three brothers are all U.S. citizens. They live in the United States, except for one brother who is serving in Afghanistan as a U.S. Government employee, and his father, who is serving in the Afghan Government.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his parents living in

Afghanistan, and indirectly, his spouse's relationships with her siblings, who are living in Afghanistan. He frequently communicates with his parents, and his spouse communicates frequently with her siblings. His father is an important Afghan official. There is no evidence, however, that terrorists, criminals, the Afghan Government, or those conducting espionage have approached or threatened Applicant or his family in Afghanistan to coerce Applicant or his family for classified or sensitive information.² As such, there is a reduced possibility that Applicant or his family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' huge investment of manpower and money in Afghanistan, and Applicant and his older brother, who is a U.S. Government employee in Afghanistan, have supported U.S. goals and objectives in Afghanistan. Applicant, his parents, and his brother 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 does not have any ongoing requirement to report his 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 significant than his strong connections to the United States. His personal risk as a translator and linguist serving with U.S. combat forces in Afghanistan is greater than the risk his parents or brother (working for the U.S. Government) face in their occupations in Afghanistan. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B.

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):

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

(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, his parents, brothers, sisters, and spouse were born in Afghanistan. His brother currently works in Afghanistan for the U.S. Government, and his father is a high-level official in the Afghan Government. Applicant traveled to Afghanistan in 2006, and frequently communicates with his parents while they are in Afghanistan. His father is at significantly greater risk due to his position in the Afghan Government than due to his relationship with Applicant, if he were to receive access to classified information.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there.³ Afghanistan is a very 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 his work with the U.S. Armed Forces will endanger his family living in Afghanistan, and will be personally dangerous. 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.

The circumstances tending to support approval of a clearance for Applicant are more significant than the factors weighing towards denial of his clearance. In 1983, Applicant's father brought Applicant to the United States. He completed high school in the United States, and he was awarded bachelor's and associate's degrees from U.S. educational institutions. In 1993, Applicant became a U.S. citizen. His three children were born in the United States. He has significantly greater contacts or connections with the United States than with Afghanistan. Although he has frequent contact with his parents living in Afghanistan, his brother is a U.S. citizen and serves as a U.S. Government employee in Afghanistan. Applicant does not own property in Afghanistan.

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).

When he was naturalized as a U.S. citizen, he swore allegiance to the United States. He believes (probably incorrectly) that he has renounced his Afghan citizenship. He promised to take steps to renounce his Afghan citizenship.

Applicant wishes to return to Afghanistan and serve with U.S. Armed Forces as a linguist and translator. He is willing to risk his life as part of his duties on behalf of the U.S. combat forces in Afghanistan. He is fully aware of the risks to himself, and he is also aware that other family members 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 him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's strong connections to the United States and especially to his U.S. family, community, and his desire for employment as a translator in a combat zone establish "such deep and longstanding relationships and loyalties in the U.S., [he] 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 10-11.

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

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence concerns are mitigated. Eligibility for access to classified information is granted.

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 1.a to 1.d: 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.

Mark Harvey
Administrative Judge