



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 10-00907 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Jon L. Roberts, Esq.

February 25, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On July 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented in September 2006.

Applicant received the SOR on September 14, 2010, and requested a hearing before an administrative judge. DOHA assigned the case to me on December 14, 2010. I convened the hearing as scheduled on January 21, 2011. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified on her own behalf and presented the testimony of four witnesses. She submitted 17 documents (AE A-Q), which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 31, 2011. Eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Afghanistan. (Tr. 9) The request and the attached documents are included in the record as Hearing Exhibit I. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations in ¶ 1.a through ¶ 1.d. Her admissions are incorporated in my findings of fact. I make the following findings:

Applicant is a 49-year-old woman who was born and educated in Afghanistan. She graduated from university in 1984, receiving her undergraduate degree. Applicant married in 1983. Her husband was also born in Afghanistan. He was a history teacher. She and her husband had four children from their marriage. Applicant taught school in Afghanistan until 1992. (AE A)

Due to economic and social conditions, Applicant left Afghanistan and lived in Pakistan with her four children. Her husband remained in Afghanistan as a teacher. Applicant returned to Afghanistan briefly, but she fled Afghanistan, after her husband was kidnapped and murdered in 1996. (GE 4; Tr. 13) She and her four children lived in a refugee camp. Applicant requested to come to the United States and has lived in the United States since 1999. (Tr. 20)

Since 1999, Applicant has supported her four children in the United States. She obtained many positions to provide for her family. She met a U.S. citizen in 2002 in church whom she later married in 2004. She and her four children who are naturalized U.S. citizens live with her and her U.S. spouse. (GE 1)

Applicant is a Christian. She noted that when she arrived in the United States, she was approached many times by a leader of the local mosque to return to the Muslim faith. She has been a Christian for a long time and does not want to have any ties with the Muslim groups in the United States.

Applicant became a naturalized citizen in 2006. (AE B) She wanted to use her background and language experience to help the United States. She decided that she would become a linguist. (Tr. 96) She sought a job with the U.S. Army in Afghanistan in 2007. (GE 1) However, after she was offered a position and processed for training, she was notified that due to the foreign influence issues she could not be hired under the defense contract. (GE 4)

Applicant's mother is deceased. Applicant's father is a citizen of and resident in Afghanistan. His second wife (Applicant's stepmother) lives with him in Afghanistan. Applicant maintains no contact with her father or stepmother. The last time she saw her father was in 2006 when she traveled to Afghanistan. (Tr. 86) Her father is elderly and retired, but he did not work for the government of Afghanistan. At the hearing, Applicant stated that she does not know whether her father is still alive. (Tr. 112)

Applicant has three brothers who live in Afghanistan. She saw two of them in 2006. Before that time, she had not seen them since she fled the country in 1999. Her two brothers did not work for the government of Afghanistan. She does not maintain any contact with them.

Applicant has four sisters who are citizens of and residents in Afghanistan. Applicant last saw them in 2006. She has no contact at all with three of her sisters. One sister called her in 2006 (Tr. 70) Applicant does not maintain any contact with her sisters by phone or email.

Applicant's one brother served in the Afghanistan National Army. Applicant has learned that he is no longer in the Army. She has not seen him since 1997. On advice of counsel, she contacted a sister in 2009, to get documentation that her brother is no longer in the Army. (GE 4) She learned that he had no job and joined the Army to support himself.

Applicant learned that she had half-brothers and half-sisters when she saw her father in 2006. She met them once. She has no contact with them. She does not even know their names.

Applicant has no property in Afghanistan. She has no desire to permanently return to the country. Applicant owns a home in the United States. (AE C) She has substantial assets in the United States. (AE C, D, and G)

At the hearing, Applicant was passionate about her feelings for the United States. She related that she has worked hard to become an American. Applicant was candid in answering questions about her family members. She stated that her parents looked favorably upon her U.S. citizenship. None of her family members know that she is working as a linguist. They have no knowledge of her time working for the Army in Afghanistan.

In January 2008, Applicant obtained employment with a federal contractor. She had a category 1 interim clearance level. (GE 3) Since April 2008, Applicant served as an interpreter/cultural advisor for the Psychological Operations Company (U.S. Army)-Afghanistan. She was assigned to the infantry. She remained in her position until she returned to the United States in 2009. She resides on U.S. military installations when she works in Afghanistan. She has lived in the field and accompanied troops on missions. Applicant has been viewed as an invaluable member of the team and most important as a friend to all members of the team. (AE Q)

Applicant asserted her pride of U.S. citizenship and love for her work with the Army. (AE N) She went on missions with the U.S. Army. She has willingly put herself in danger every day for almost two years in order to help the United States. Applicant emphasized that she would never betray the United States. She wants to “give back” to the United States.” (Tr. 130)

There is no evidence in the record that Applicant breached any security policies or procedures while in Afghanistan. She had no contact with any family members while in Afghanistan. She has letters of appreciation for her work in Afghanistan. (AE P-Q)

A major commanding a unit in Afghanistan recommends Applicant for continued service. The major worked closely with Applicant from October 2008 until July 2009 in Afghanistan. During that time, he writes that Applicant “has performed exceptional work.” Applicant’s “linguistic abilities were complemented by her strong work ethic and exceptional dedication to duty.” (AE F)

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

Applicant served as the senior Pashto linguist in a Psychological Operations Company in Afghanistan. She is recommended as a linguist in Pashto, Dari, or Urdu. In addition to her linguistic accuracy she was able to make imaginative use of the language to convey meaning. For example, she developed an impressive series of products which taught Pashtoon children the dangers of explosive devices using rhymes and making creative use of the language. During her 10 months of service with a PSYOP Company she performed brilliantly. The officers and the NCOs of the company continually relied on her for accurate and meaningful translation. I give her my highest possible recommendation. (AE F)

Applicant presented a 2009 recommendation from a captain who is the executive officer of the same military unit with the U.S. Army in Afghanistan. (AE Q) The captain recognizes Applicant for her contributions to fighting the War on Terror. According to the captain, Applicant’s “dedication to the company’s mission, cultural expertise, and mastery of Pashto, Dari, Urdu, and English greatly enhanced the company’s ability to influence the Afghan populace” as follows:

Since August 2009, Applicant has played a critical role in the accomplishment of PSYOP throughout the regional command in Afghanistan. She performed her duties as a cultural advisor and media analyst admirably. We relied, very heavily, on Applicant’s language skills to help translate enemy propaganda, media reports and PSYOP messages that support tactical, operational, and national Information Operations Objectives. She has a very strong work ethic and takes considerable pride in her work. She was an integral part of the Product Development Team

and will be sorely missed. I am honored to provide a recommendation and feel that she will serve as a true asset to any team.

In 2009, Applicant was recommended for increased responsibility as a category II interpreter, after serving as a Category I Interpreter in Afghanistan. According to another captain who is an intelligence officer in Afghanistan, Applicant has been an instrumental asset to the team. Her skill as a multilinguist and a native Afghan, has proved to be invaluable. (AE Q) Moreover, he opined that:

Applicant was a great asset in engaging the local Afghan women by assisting the MEDCAPS in over four Afghan villages. The end result is that countless Afghan women were able to receive medical care that might not otherwise been available to them. Applicant has provided copies of her background investigations and through my experience as a Personnel Security Manager, I see no reason why Applicant should not be upgraded to a CAT II interpreter immediately. In the four months that she has worked with this theater task force she has displayed nothing but genuine honesty and has given us no reason at all to doubt her intentions and integrity.

Applicant has been with her current employer since March 2010. Applicant's corporate security officer commended Applicant on her performance. The security officer has heard nothing but good things about Applicant. There has never been an issue in Applicant's handling of sensitive information. She is trustworthy in all respects. (AE O) Applicant's security officer testified at the hearing that she is aware of the particular security concerns due to Applicant's family in Afghanistan, but has no hesitation in recommending Applicant for a security clearance. (Tr. 35)

Applicant's direct supervisor testified at the hearing that Applicant is working on a sensitive project. She recommends her for a clearance and has no doubt that she would report any contact from family members in Afghanistan to the security officer. (Tr. 143)

Applicant's son and daughter testified at the hearing that they have no contact with any relatives in Afghanistan. They have never heard their mother (Applicant) talk with any family members on the phone. (Tr. 63)

I take administrative notice of the following facts about Afghanistan, including the fact that Afghanistan has been an independent nation since August 19, 1919, after the British relinquished control. A monarch ruled from 1919 until a military coup in 1973. Following a Soviet-supported coup in 1978, a Marxist government emerged. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to an agreement known as the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union which ensured Soviet forces withdrew by February 1989.

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

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

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

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

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

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an

individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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

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

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of an applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination of the loyalty of an applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

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

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to an applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B (Foreign Influence)

The security concern under Guideline B is set out in AG ¶ 6 as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

A disqualifying condition may be raised by “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” AG ¶ 7(a). A disqualifying condition also may be raised by “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.” AG ¶ 7(b).

Applicant’s father and stepmother are citizens and residents of Afghanistan. She has three brothers and four sisters who are citizens and residents of Afghanistan. Applicant maintains no contact with them. She saw her father in 2006 for the first time since she fled the country in 1999. Applicant’s connections to her family in Afghanistan could create a potential conflict of interest between her security obligations and her desire to help them, only in a situation wherein they were taken hostage or otherwise threatened with harm if Applicant did not cooperate. None of her family members have any governmental connections or other positions in which they could otherwise benefit from her access to sensitive information or technology. Applicant did not maintain any regular contact with them, however, under either disqualifying condition, security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to her family members in Afghanistan. Based on this evidence, AG ¶¶ 7(a) and (b) are raised.

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

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States.

Security concerns under this guideline can be mitigated by showing that “the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG 8(b) “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant has been in the United States since 1999, and she has been a U.S. citizen since 2006. Her husband is a U.S. citizen and her four children are U.S. citizens. She has substantial interests in the United States. She has no desire to return to Afghanistan to live. Her husband was murdered in Afghanistan. She has started a new life with her four children and her second husband in the United States.

Applicant does not maintain contact with her father or her siblings. She does not know whether her father is alive. She last saw her Afghan family in 2006. Other than her contact in 2009 to obtain a document concerning the military status of one brother, she has had virtually no contact with any Afghan sibling in Afghanistan.

Applicant’s work as an interpreter and cultural advisor supported the U.S. military mission in Afghanistan, not the work of those who seek to destroy the growing democracy in Afghanistan. The new Afghanistan government relies upon the United States for support, both financially and militarily, as it moves forward with a new form of

government. While Afghanistan's human rights record under the Taliban was dismal and serious problems continue, its human rights record is slowly improving. Since working as an interpreter with the Army for two years, neither Applicant nor her family has been pressured by any organization to provide any type of information, classified or otherwise, about the United States.

In every case where a sibling lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation, pressure, or coercion is not substantial. Applicant has significant ties to the United States and few ties to Afghanistan. Applicant has no financial or property interests in Afghanistan. She wants to help the United States in its role in the redevelopment of Afghanistan. Applicant's ties with the United States are much stronger than her ties with Afghanistan. The Army holds her work as a translator and cultural advisor in high regard. She provided more than language interpretation skills. She explained nuances and practices that greatly assisted the military in accomplishing its mission. During her time in Afghanistan, she worked hard to help the Army. She developed a high level of trust with the Army and the Afghan locals.

Applicant spoke about her undivided loyalty to the United States. Based on her relationship and loyalty to the United States, she can be expected to resolve any conflict of interest in favor of the U.S. interest. She has lived in the United States since 1999, and did not return to Afghanistan until 2006. In 2008, she did return to Afghanistan at the behest of the United States. She owns property in the United States. She has worked in the United States for many years. She has endured dangerous conditions in Afghanistan on behalf of the U.S. Army. She has no security violations. She credibly testified that she would report someone to the U. S. Government if asked about classified information. I find Applicant has such deep and longstanding relationships and loyalties in America that she can be expected to resolve any potential conflict of interest in favor of the United States. She has established application of AG ¶ 8(b).

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Certain circumstances weigh against Applicant in the whole-person analysis. First, assuming her father and stepmother are alive, Applicant has a father and stepmother and brothers and sisters who still live in Afghanistan. One brother was in the Afghan Army until 2008. Terrorists or agents of the Tal’iban could attempt to use Applicant’s family to obtain information. These connections raise the possibility of foreign influence.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there. Afghanistan is a dangerous place because of the 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 with and assist the United States. Applicant recognizes her work with the U.S. Armed Forces will endanger her family living in Afghanistan, and will be personally dangerous. The United States and Afghanistan 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.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant fled Afghanistan after her husband was kidnapped and murdered. She lived in a refugee camp with her four children. Applicant wanted to come to the United States. She is a mature person, who has lived in the United States since 1999, and has been a naturalized citizen since 2006. She has a strong sense of patriotism toward the United States, as witnessed by her dedication and work with the U.S. Army. There is no evidence that she has ever taken any action that could cause potential harm to the United States. Her military supervisors, who work with her daily in a war zone, praised her work in the cause of freedom in Afghanistan. After fleeing in 1999, she returned once in 2006 to visit her elderly father. She has no desire to return. She has established her life in the United States. She now owns property in the U.S.

Applicant is a loyal U.S. citizen who has worked under dangerous conditions in support of our national defense. She credibly testified that she would report any attempt to use her family members to coerce her to reveal classified information. The Appeal Board has held that “generally, an applicant’s statements, by themselves, as to what he [or she] would do in the face of threats by a foreign government or entity are entitled to

little weight. On the other hand, an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."¹

She served the United States in a dangerous, high-risk situation and her character references establish her significant contributions to U.S. national security. While contribution to a company is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case. No. 05-03846 at 6 (App. Bd. Nov. 14, 2006):

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

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.² The complicated state of affairs in Afghanistan places a significant burden on Applicant to demonstrate that her foreign family members do not pose an unacceptable security risk. She has met that burden. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

¹ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

²

I conclude that the whole-person analysis weighs heavily toward approval of her security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG 8 do not apply, I conclude the whole-person analysis standing alone is sufficient to support approval of a security clearance in this case.

Paragraph 1, Foreign Influence: FOR APPLICANT

Subparagraphs 1.a through 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.

Noreen A. Lynch
Administrative Judge