



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



In the matter of:)
)
-----) ISCR Case No. 10-01846
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Department Counsel
For Applicant: *Pro se*

June 16, 2011

Decision

HARVEY, Mark, Administrative Judge:

Applicant's spouse and three children are citizens and residents of Afghanistan. He cares about his spouse and children and provides financial support to them. He admits they are at serious risk for injury or death if terrorists discover their identity or relationship to Applicant. Foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On April 24, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF-86) (Government Exhibit (GE) 1). On September 7, 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.

On September 20, 2010, 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 December 1, 2010, DOHA assigned the case to me. Department Counsel and Applicant were communicating about setting the hearing for several weeks because Applicant was deployed to Afghanistan, and the hearing was delayed until Applicant would be in the United States. (Tr. 23) On March 9, 2011, DOHA sent notice of the hearing. (Tr. 12) Another hearing notice was mailed on March 17, 2011 and sent by email to Applicant on March 22, 2011 to delay the hearing to April 6, 2011, at Applicant's request. (Tr. 13-14, 34-35) Applicant left Afghanistan and arrived at the hearing location on March 24, 2011. (Tr. 16) On March 25, 2011, he found an attorney in the telephone book. (Tr. 21) He telephoned the attorney on March 25, 2011; however, he talked to the attorney for seven or eight minutes and the attorney told Applicant that he was unable to represent Applicant on such short notice. (Tr. 20-22) Applicant agreed to proceed with the hearing on April 6, 2011, provided he received 30 days after the hearing to submit additional documents. (Tr. 24-25) He is familiar with legal matters, as he has a master's degree from a well-known U.S. university, and he has studied law. (Tr. 24)

On April 6, 2011, Applicant's hearing was held using video teleconference. I was located in Arlington, Virginia and Applicant and Department Counsel were at Applicant's location. I received the transcript of the hearing on April 18, 2011. The record closed on May 6, 2011. (Tr. 150)

Procedural Rulings

At the hearing, Department Counsel offered eight exhibits (GE 1-8) (Transcript (Tr.) 46-47), and Applicant offered 35 documents (AE A-LL). (Tr. 80-98) Department Counsel did not object to my consideration of Applicant's exhibits, and I admitted AE A-AE LL. (Tr. 98)

Applicant did not object to GE 1, 2, 8. (Tr. 48, 52, 76-77) Applicant objected to admissibility of GE 3-7 based on the accuracy of the information in those documents. (Tr. 47-77)¹ Department Counsel and Applicant agreed that I could accept Applicant's

¹ Applicant said the following information in GE 3-7 was incorrect: (1) in GE 4, the date of birth for Applicant's brother (Tr. 60); (2) in GE 5, the date he started working in Afghanistan's Diplomatic Service; (3) in GE 5, the date he surrendered his Afghan diplomatic passport; (4) in GE 5, any conclusion that he was disloyal to the United States; (5) in GE 5 at page 14, the author of the document wrote the incorrect name of the country where Applicant had important deployment employment (Tr. 63); (6) in GE 5, any explicit or implicit conclusion that he worked for a foreign intelligence service or worked with those in a foreign intelligence service (Tr. 64); (7) in GE 5, the year he started working in the Afghan diplomatic office (Tr. 64); (8) in GE 5, the report incorrectly said that Applicant said "90" members of his family were killed by poison gas when he actually said "19" (Tr. 64); (9) in GE 6, he left Afghanistan and not Iraq in 2006, and he did not describe himself as "defective" or any similar word (Tr. 66); (10) in GE 6 at page 7, that he left his position in 2000 under adverse circumstances or was fired when he actually left with an

statements of fact in connection with his objections to GE 3-7 as substantive evidence. (Tr. 78-79) I accept Applicant's corrections to the record as fact. (Tr. 54, 58-59, 61, 62, 65) I overruled Applicant's objections to admissibility of GE 3-6, indicating his objections went to the weight, rather than the admissibility of GE 3-7. (Tr. 58-60, 61, 62, 65, 73, 76) I specifically give no weight to the conclusions of the counter-intelligence personnel about Applicant's lack of credibility, and I have independently drawn my own credibility conclusions.

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. 77-78)

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 Fact²

Applicant's response to the SOR admitted the allegations in SOR ¶¶ 1.a through 1.h. (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.

Applicant was born in 1943, and he is 68 years old. (Tr. 99) A Department of Defense contractor employs him as a linguist and cultural advisor. He currently holds a secret security clearance.

Applicant married in 1955, and his three children were born in 1977, 1978, and 1984. (GE 1) Applicant, his spouse, and three children were all born in Afghanistan. Applicant attended college and university in Afghanistan where he studied law and political science. (Tr. 100) He attended a large U.S. university for about one year in the

excellent recommendation (Tr. 66-68); (11) In GE 6, the investigator made a mistake about his Afghan passport (Tr. 68); (12) in GE 6, Applicant clarified how his family came to the United States in the 1990s and why they returned to Afghanistan (Tr. 69); (13) in GE 6, he reiterated his lack of connection with Afghan intelligence services (Tr. 70); (14) in GE 6, he corrected the dates of his employment at the Afghan Diplomatic Service (Tr. 70); (15) in GE 6, he said that he was "forcibly brought" into the Afghan Diplomatic Service (Tr. 70); (16) in GE 6, he explained why he was upset with the Afghan Diplomatic Service in the 1990s (Tr. 71); (17) in GE 6, the report said he was from a high-class Afghan family (Tr. 71); (18) in GE 7, he cooperated with an FBI agent that questioned him and the inference that there was something derogatory about his contact with the FBI was incorrect (Tr. 75-76).

² The 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.

late 1960s. He served one year in the Afghan military. (Tr. 100) He was then employed in the Afghan Government from 1967 to 1978. (Tr. 100-101) He purchased an apartment in Afghanistan in 1971. (Tr. 101) From about 1979 to 1980, he was unemployed. (Tr. 101) Applicant said he was forced to take a government job in Afghanistan from 1980 to 1995 working for the Afghan Diplomatic Service. (Tr. 44; SOR ¶ 1.g) His diplomatic position was particularly important during a 3-year-period in the 1980s and during a 2-year-period in the 1990s. (Tr. 44, 102-103; SOR ¶ 1.h)

In 1995, he entered the United States on a tourist visa. (Tr. 103; GE 2 at 15-21) He received threatening letters from the Afghan Government, and he applied for asylum in the United States. (Tr. 103; GE 2 at 21) On May 22, 1996, Applicant, his spouse, one of his daughters, and his son received political asylum in the United States. (Tr. 39) His older daughter's asylum was delayed until December 31, 1998. (Tr. 40) Applicant's two daughters, his wife and his son left Asia and lived in Canada until they moved to the United States. (Tr. 69, 104) His 18-year-old daughter needed to reapply for asylum, and she received her visa to come to the United States on December 31, 1998. (Tr. 69) Applicant's family went back to Afghanistan in 2000 to be with his older daughter, who was alone in Afghanistan to "safeguard her honor and prestige." (Tr. 105-06) In July 2004, Applicant was naturalized as a U.S. citizen. (GE 2 at 16, 21)

At his hearing, Applicant said he has not seen his family since 2000, even though he was deployed to Afghanistan as a contractor in 2004-2006 and 2009-2011. (Tr. 107-08, 118-119) He said he did not talk to his wife in more than one year. (Tr. 108)³ Later he said his contact with his family in Afghanistan was, "When I was here, after a couple of months, and something like that, so—more or less." (Tr. 112) His family was afraid to go out and show themselves because "they will be captured, and they press them to call me over there too." (Tr. 109) He did not think his son and daughters were employed in Afghanistan. (Tr. 109) He sends his family living in Afghanistan \$200 to \$300 every couple of months to pay their bills. (Tr. 109; SOR ¶ 1.b) His son is afraid to accept employment because "they will put him in some prison to bring [Applicant] back, their father, over there." (Tr. 144) His oldest daughter was getting married; however, he claimed he did not know when they would marry "because he is not in touch." (Tr. 110)

³ Applicant's October 14, 2004, SF 86 indicates he lives in the United States and his spouse and one son and one daughter live at his address in the United States. (GE 8) His other daughter lives in Afghanistan. (GE 8) His October 18, 2004 counter-intelligence questionnaire indicates he had daily contact with his spouse and children, who are living in the United States, and he had not had contact with his daughter L, who is in Afghanistan, since 2002. (GE 7 at 15) His September 28, 2006 counter-intelligence questionnaire indicates he had contact with his spouse and children living in Afghanistan four to five times per year. (GE at 38) His wife left the United States more than two years previously. (GE 6 at 10) His wife only lived in the United States from 1998 to 2000. (GE 6 at 11)

His April 23, 2009 counter-intelligence questionnaire indicates his frequency of contact with his spouse and three children is approximately once a month. (GE 2 at 36) On May 15, 2009, an Office of Personnel Management (OPM) investigator interviewed Applicant (OPM PSI). (GE 2 at 4-6) His PSI indicates he communicates with his wife, his daughter, who was born in 1977, his son, who was born in 1978, his other daughter, and his niece three to seven times a year. (GE 2 at 4-6)

When Applicant is in the United States, he lives with his niece, who is the daughter of his older sister. (Tr. 112-113) His brothers and his father-in-law work for the Afghan Government. (Tr. 113) He expected his spouse and children to return to the United States when they get a U.S. visa. (Tr. 115) His spouse, children, and one niece are not U.S. citizens. (Tr. 117; SOR ¶¶ 1.a, 1.c, and 1.d) They are solely Afghan citizens and live in Afghanistan. (Tr. 117; SOR ¶ 1.a, 1.c, and 1.d)

Applicant said there is no law in the United States and that is why Applicant's wife, daughters, and son returned to Afghan. (Tr. 69) His daughter is waiting for her green card and intends to return to the United States. (Tr. 69) It was very important to Applicant that his daughter not sleep with any other person before marriage because "she will be so clean and be virgin." (Tr. 40) This is a very important cultural and tribal value for Applicant. (Tr. 4)

Applicant denied that he currently owned an apartment in Afghanistan because it was taken by the "law of the gun" and now other people had possession of the apartment. (Tr. 41; SOR ¶ 1.e)

Applicant loves the United States of America and Americans. (Tr. 42) He respects "the Constitution more than anyone else, with [his] heart, mind, soul and blood." (Tr. 42-43) He is ready to die for the United States. (Tr. 43) He described himself as "loyal, trustworthy, patriotic, honest, pure, and proud citizen of the United States." (Tr. 42)

As indicated previously, Applicant's corrections to GE 3-7 were accepted as fact. He vehemently denied being under the foreign influence of the communists "who killed 19 members of [his] family by poison gas" and looted his house. (Tr. 42, 53-54) He had a deep-seated anger towards the communists, "terrorists, extremists, butcher[s], looters, destroyers, and mad groups." (Tr. 43, 53-54) Applicant was sincere and credible on these points and I find that the communists are not able to influence Applicant because he is adamantly opposed to them. (Tr. 53)

Applicant was unhappy with the conduct of the counter-intelligence interviewer. (Tr. 44-45) He believed the counter-intelligence report had "a lot of misinterpretation" and ultimately the report was a figment of the interviewer's imagination. (Tr. 45) Applicant objected because several exhibits had incorrect dates for his important Afghan Diplomatic Service, which was actually from during a 3-year-period in the 1980s and during a 2-year-period in the 1990s, and that he held just one passport issued by Afghanistan and that was an official Afghanistan diplomatic passport. (Tr. 54-55, 59)

Applicant emphasized that his family was in Afghanistan for the honor and dignity of their family, especially his daughter. (Tr. 133-134, 145) They would lose face with their tribe if she lived alone in Afghanistan. (Tr. 133-134) His family was in Afghanistan despite the terrible things that happen every second and the great danger that they face. (Tr. 133-134, 142)

Applicant has earned a substantial income over the last six years serving in Afghanistan, and this income is essentially tax free. (Tr. 135-136) He had approximately \$70,000 to \$90,000 in his U.S. checking account. (Tr. 135-136) He denied that he provided more than \$200 to \$300 every couple of months to his family in Afghanistan; however, he could not or would not provide a detailed explanation of what he did with his income. (Tr. 135-138, 142)⁴ He said the total payment per year to his family in Afghanistan is about \$2,500. (Tr. 142) He claimed that the last time he sent them money was in 2009. (Tr. 143) As post-hearing evidence, I requested Applicant's 1040s for the past five years and a written explanation for disposition of his income so that I could compare his U.S. investments with his investments in Afghanistan. (Tr. 150) In 2009, his income was \$104,788. In 2008, his income was \$10,904. In 2007, his income was \$4,684. In 2006, his income was \$73,170. In 2005, his income was \$126,404. In 2004, his income was \$13,372. (AE JJ) He did not explain what he did with his income other than to state he "lost a good big chunk of my money" in the bad economy, and all of his investments were in the United States. (AE B)

Character Evidence

Applicant provided several unit coins received for his outstanding contributions to mission accomplishment. (AE HH, AE LL) He received certificates of appreciation in 2010 from the U.S. Marine Corps for his service as a linguist and cultural advisor in Afghanistan. (AE C) In 2010-2011, he received letters of appreciation from the U.S. Marine Corps, International Security Assistance Force, a university-run agricultural project, and a Provincial Governor for his service in 2010-2011 in Afghanistan, which included his contributions to mission accomplishment and for assuming the risks associated with military endeavors. (AE D, AE E, AE F, AE G) His performance evaluations as a linguist were superior. (AE H) He earned a letter of commendation a letter of appreciation, and a certificate of appreciation from an Army medic, battalion surgeon, and a U.S. Army Special Forces unit for being an intelligent, knowledgeable, diligent, and outstanding linguist in 2009-2010. (AE I, AE J, AE K, AE L)

Applicant received letters of commendation and certificates of recognition from a military police company for outstanding dedication and being a great asset as an interpreter from 2004 to 2005. (AE M, AE O, AE P, AE Q, AE R) He received an undated certificate of appreciation from a military intelligence task force, a 2003 certificate for his commitment to service excellence, and a 2002 training certificate. (AE N, AE CC, AE DD, AE EE)

Applicant received letters of commendation, dated October 23, 1997 and March 28, 2000 for his diligence, loyalty, contributions, and trustworthiness from his district manager and his parts manager. (AE T, AE U) He also received certificates for his contributions to charity and to the Veterans of Foreign Wars. (AE V, AE W, AE X, AE Y, AE Z, AE AA, AE BB, AE FF, AE GG)

⁴ During his February 6, 2008 counter-intelligence interview, Applicant was unable or unwilling to provide detailed information about how he transferred money overseas to his family. (GE 5 at 12)

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 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:

[I]f 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 two 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; and

(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.

AG ¶¶ 7(a) and 7(b) apply. Applicant, his spouse, son, and two daughters were all born in Afghanistan. He has frequent contact with his spouse and children, who have been living in Afghanistan since 2000. He provides financial support to his family living in Afghanistan, and he cares about their welfare. He admitted that his family is a probable target of terrorists and the Taliban. Although thousands of U.S. and coalition armed forces and civilian contractors serving in Afghanistan are also targets, along with Afghan civilians who support the Afghan Government and cooperate with coalition forces, his family is not receiving any special protection from these threats from the Afghan or U.S. Governments.

Applicant's connections to his niece living in Afghanistan are too attenuated to raise a security concern, and the allegation in SOR ¶ 1.d is refuted. Applicant's apartment in Afghanistan was taken from him in the 1990s, and he no longer has ownership. Accordingly, SOR ¶ 1.e is refuted. Applicant's military service in 1966-1967, which was mandatory service, is mitigated because it is remote in time and was involuntary. SOR ¶ 1.f is found for Applicant. Applicant's employment in the Afghanistan Government from the mid 1960s to the late 1970s and from the early 1980s to 1995 (more than 25 years) is considered as a unitary matter.

SOR ¶¶ 1.g and 1.h raise a disqualifying concern because such extensive service in the Afghan Government has made Applicant and his family targets for unlawful attacks, as indicated in his statement at his hearing. Additionally, Applicant has denied contacts with Afghan intelligence services. I take his statement to mean that when he was a diplomat, he occasionally did have contacts with intelligence services; however, after leaving the Afghan Diplomatic Service those contacts ended. Some of his misstatements may be due to his good faith misinterpretations of the questions. For example, he may have thought that the questions concerned his current contacts with Afghan intelligence services.

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).

While there is no evidence that intelligence operatives or terrorists 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 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 his family living in Afghanistan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) 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 served in Afghanistan for several years from 2004-2011. I do not believe his statement that he never visited his family while he was in Afghanistan. His statements about contacting his family are inconsistent. I find he has frequent contact with his spouse and children, who live in Afghanistan. His loyalty, connections, and financial support provided to his spouse and children are a positive character trait. He did not believe they were employed because of risks that others might discover their connection to Applicant. Applicant appears to be their sole means of financial support. However, for security clearance purposes, those same connections to his family living in Afghanistan negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed 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) partially 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 significant connections to the United States, having lived in the United States for more than 15 years. He became a naturalized U.S. citizen in 2004. Most importantly, Applicant wants his security clearance to be reinstated so that he can return to Afghanistan and assist U.S. Armed Forces. He has offered to continue to risk his life to support the United States' goals in Afghanistan. He has shown his patriotism, loyalty, and fidelity to the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family living in Afghanistan, and indirectly, his family's relationships with other Afghan citizens living in Afghanistan. He frequently communicates with his family living in Afghanistan. He served in the Afghan Government for many years and was an important Afghan diplomatic 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, during the last ten years, to coerce Applicant or his family

for classified or sensitive information.⁵ As such, there is a reduced possibility that Applicant or his family would be specifically selected as targets for improper coercion or exploitation. On the other hand, Applicant has conceded that his family living in Afghanistan is already at risk from terrorists.

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 has supported U.S. goals and objectives in Afghanistan. Applicant and his family living in Afghanistan are potential targets of terrorists and the Taliban because of Applicant's own activities and support for the United States, and Applicant's potential access to classified information is likely to add some risk to Applicant and his family 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 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. As indicated previously, Applicant lost the real estate he owned in Afghanistan.

In sum, Applicant's connections to family living in Afghanistan are very significant and greater than his connections to the United States. His Afghan Government employment (more than 25 years) is more significant than his employment related to the U.S. Government (four or five years). He does not have any immediate family living in the United States. His connections to the United States taken together are insufficient 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):

- (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

⁵ There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

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 substantial factors weighing towards reinstatement of Applicant's security clearance; however, they are insufficient to warrant reinstatement of his security clearance. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations. Applicant wishes to return to Afghanistan and serve with U.S. Armed Forces as a linguist and translator. He is willing to continue 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 increase the probability 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). The circumstances tending to support approval of a clearance for Applicant are less significant than the factors weighing towards denial of his clearance. Applicant does not own property in Afghanistan. When he was naturalized as a U.S. citizen in 2004, he swore allegiance to the United States. His desire for employment as a translator and past evaluations, certificates, letters, and recommendations document his outstanding performance as a translator and weigh heavily in his favor. His character evidence tends to support reinstatement of his security clearance.

There are substantial unmitigated security concerns arising from Applicant's spouse and children's continued Afghan citizenship and residence in Afghanistan. Applicant, his spouse, and his children were born in Afghanistan. Applicant held a high level diplomatic position in the Afghan Government in the 1990s and was employed by the Afghan Government for more than 25 years. His Afghan connections are weighed against his connections to the United States. I do not believe Applicant's statement that he never visited his family from 2004 to 2011, and that he has not contacted his spouse since 2009. Applicant has made inconsistent statements. At his hearing, he said his family moved to Afghanistan in 2000. His 2004 SF 86 and his 2004 counter-intelligence interview indicate he said his spouse and one son and one daughter lived at his address in the United States. See n. 3, *supra*. I decline to consider any of these allegations as disqualifying conditions. However, I consider his inconsistent statements for the limited purposes outlined in n. 6.⁶ He has made several other inconsistent statements about

⁶ In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

the frequency of his contacts with his spouse and children. I find he frequently communicates with his spouse and children and has visited them in the last several years while they were all in Afghanistan. His family is at significantly greater risk due to Applicant's position as a linguist and he will receive access to more sensitive and classified information if his clearance is reinstated, further increasing the risk to his family.

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there.⁷ 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.

After weighing all the facts and circumstances in this decision, including Applicant's demeanor and sincerity at his hearing, I find his statements about the absence of his contacts with his family not to be credible, and I conclude he has failed to carry 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 not mitigated. Eligibility for access to classified information is denied.

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Consideration of the non-SOR misconduct is limited to these five circumstances.

⁷ 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).

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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, and 1.c:	Against Applicant
Subparagraphs 1.d, 1.e, and 1.f:	For Applicant
Subparagraphs 1.g and 1.h:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge