



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-06590

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: *Pro se*

10/01/2012

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated foreign influence concerns. Eligibility for access to classified information is granted.

History of Case

On February 23, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant Applicant a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs), effective within the Department of Defense on September 1, 2006.

Applicant responded to the SOR on March 5, 2012, and requested a hearing. The case was assigned to another administrative judge on May 4, 2012, and reassigned to me on May 31, 2012. The case was scheduled for hearing initially on July 26, 2012, and rescheduled for August 1, 2012. At the scheduled hearing, the Government's case consisted of three exhibits (GEs 1-3); Applicant relied on one witness (himself) and five exhibits (AEs A-E). The transcript (Tr.) was received on August 7, 2012.

Besides its three exhibits, the Government requested administrative notice of seven documents pertaining to Afghanistan: *Background Note: Afghanistan*, U.S. Department of State (November 2011); *Country Specific Information: Afghanistan*, U.S. Department of State (February 7, 2012); *2010 Human Rights Report: Afghanistan*, U.S. Department of State (April 2011); *Worldwide Threat Assessment of Intelligence Community*, Director of National Intelligence (February 2011); *Worldwide Threat Assessment of Intelligence Community*, Director of National Intelligence (February 2012); *Country Reports on Terrorism 2010, Chapter 5-Terrorist Safe Havens and Tactics and Tools for Eliminating Safe Havens*, U.S. Department of State (August 2011); and *Travel Warning: Afghanistan*, U.S. Department of State (December 2011).

The Government also requested administrative notice of nine documents pertaining to Pakistan. These documents are covered in the administrative notice furnished by the Government and are identified in the transcript of the proceedings.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Afghanistan and Pakistan. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing the current status of Afghanistan and Pakistan.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with endorsements. For good cause shown, Applicant was granted seven days to supplement the record. Within the time permitted, Applicant provided an appreciation certificate and endorsements. Applicant's submissions were not objected to by Department Counsel and were admitted as AEs F-H.

Summary of Pleadings

Under Guideline B, Applicant allegedly has relatives who (a) are citizens and residents of Afghanistan: his father, two of his sisters, and their husbands; (b) have dual

citizenship between Afghanistan and Germany: two of his sisters and one of his brothers-in-law; (c) are citizens of Afghanistan residing in the United States: one of his sisters; and (d) who reside in Pakistan.

In his response to the SOR, Applicant admitted some of the allegations, but denied others. He admitted his father was a citizen and resident of Afghanistan before his death in April 2010. He admitted he has two sisters and their husbands who are citizens and residents of Afghanistan. But he denied having two sisters and one of his brother-in-laws, who are dual citizens of Afghanistan and Germany residing in Germany. He explained that all of his family members residing in Germany have been granted political asylum and are not citizens of Germany.

Applicant also denied having one sister residing in the United States as a citizen of Afghanistan. He claimed this sister is a naturalized U.S. citizen since February 2012 and is currently in the process of becoming an interpreter for the U.S. Department of Defense (DoD) Finally, he denied having any family residing in Pakistan. He claimed his family members are quite typical of the heavy migration of Afghan citizens during the invasion of the Soviet Union.

Findings of Fact

Applicant is a 46-year old cultural advisor for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born and raised in Afghanistan to parents of Afghan descent. (GEs 1 and 2) He married a U.S. citizen in October 2002. (GEs 1 and 2; Tr. 51-52) He has no children from this marriage.

Applicant was arrested in 1987 in Afghanistan while protesting against the Soviets. (GE 2) He was imprisoned for eight months and released on condition he join the Afghanistan military. Instead of enlisting in the Afghan military, he fled to another area of Afghanistan where the Soviets did not have control. (GE 3)

In April 1992, Applicant's father helped Applicant escape to Pakistan, using a fake Afghan passport. (GE 3; Tr. 45) Once in Pakistan, Applicant was able to obtain transit to Saudi Arabia, and eventually the United States where he sought political asylum. (GE 3; Tr. 46-47) He was granted political asylum in the United States in September 1995. (GE 3) Upon being granted political asylum, Applicant applied for U.S. citizenship. (GE 3) He became a naturalized U.S. citizen in March 2006 and renounced his Afghan citizenship. (GEs 1-3)

Applicant was issued a U.S. passport in April 2006 and had his Afghan passport (expiration in April 2016) canceled in March 2007. (GEs 1-3) He believes his Afghan

passport was destroyed by his employer, which acquired possession of it shortly after he was hired. (GE 3) Applicant himself destroyed his Pakistani passport shortly after he arrived in the United States. (GE 3)

Applicant claims no U.S. military service. (GE 2) He attended a U.S. college between August 1998 and March 2004 and earned an associates of arts degree. (GEs 1 and 2; Tr. 48) He earned a bachelor's degree from an accredited U.S. university in May 2007. (GEs 1 and 2; Tr. 48) As a cultural advisor for his U.S. employer, Applicant twice deployed to Afghanistan to support the Marine Expeditionary units he was assigned to advise and instruct: once in 2007 and again in 2010. (Tr. 49-51)

Most of Applicant's family are U.S. citizens. His father, a citizen and resident of Afghanistan, passed away in April 2009. (GE 3; Tr. 56) His mother immigrated to the United States in 2006 and resided with him until her death in 2011. (Tr. 56-57) Applicant has six sisters. Two of them reside in the United States and are naturalized U.S. citizens. (GEs 1-3; Tr. 64-65) They are homemakers who have no affiliations with any foreign government. Applicant has two other sisters who are citizens of Afghanistan, but not Germany. They acquired political refugee status upon their arrival in Germany and currently reside in this country with their husbands in unchanged political refugee status. (GEs 1-3; Tr. 62-63) Applicant provides some financial support to these sisters. (GE 3; Tr. 57-58) They have no identified interests or associations with the Afghan government or military.

Applicant's two remaining sisters are citizens of Afghanistan, where they reside with their husbands. (GEs 1-3; Tr. 57-58) Applicant provides some financial support to these sisters as well and maintains contact with them on special occasions, generally twice a year. (GE 3; Tr. 58-59, 72-73) He is careful about not disclosing any sensitive information to his sisters or their spouses about his work with the Marine Corps. (GE 3) Applicant last visited these sisters when he traveled to Afghanistan in 2008 to see his ailing father who suffered from a stroke. (Tr. 60-61) Neither of his sisters nor their husbands residing in Afghanistan, have any interests or associations with the Afghan government or military. And Applicant has no reason to believe that either of his sisters or family members residing in Afghanistan are at any risk to pressure, compromise, or coercion. (Tr. 58-59)

Besides his sisters, Applicant has two brothers. Both of his brothers are citizens and residents of the United States. He maintains infrequent contact with them. Applicant has no relatives residing in Pakistan. His relatives who lived there returned to Afghanistan in 2001. (Tr. 66-67)

Applicant loves the United States and is devoted to preserving its vital security interests. (Tr. 67-68) When traveling to Afghanistan, Applicant always used his U.S. passport. (Tr. 62) He and his wife own a home in the U.S. community of their residence, which they value at around \$700,000. (Tr. 52-53) They have an estimated net worth of approximately \$200,000 after allowing for their mortgage. (Tr. 53-54)

Endorsements

Applicant is highly regarded by members of his command, colleagues, and his spouse. His uniformed supervisor credits him with “unfaltering professionalism and tenacity” and commends him for the quality instruction he provided Marine light infantry students. A battalion officer describes him as skilled, dependable, and multi-talented. (AE A) Applicant was chosen as a State Department field engagement team specialist in October 2011 to work with the Department’s Pakistan and Afghanistan support offices. (AE E) The Director of the Marine learning center that employs Applicant described Applicant as trustworthy, exemplary, and indispensable in his “expertise, passion, commitment, and training/educational impact.” (AE H) The director of a terrorism research center expressed strong praise for the research and analysis he provided during his internship with the center. (AE G)

Applicant has earned numerous decorations and commendations from the Marine command he has served. (AEs A and D) These awards express gratitude for Applicant’s commitment and achievements to his Marine Corp command and terrorism research center.

Country information on Afghanistan

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

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

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

Since the British relinquished control in August 1919, Afghanistan has been an independent state. *Background Note: Afghanistan, supra*, at 3-4. Between 1919 and 1973, Afghanistan moved away from its longstanding isolation under a succession of Muslim rulers: King Amanullah (1919-1929), Nadir Khan (1929-1933), and Mohammad

Zahir Shah (Nadir Khan's 19-year-old son), who ruled Afghanistan for over 40 years (1933-1973). See *Background Note: Afghanistan, supra*.

Prime minister between 1953 and 1963, Sardar Mohammad Daoud mounted a military coup in 1973 and seized power amid charges of corruption and malfeasance against Zahir Shah and his royal family. Daoud proceeded to abolish the monarchy, abrogate the constitution, and declare Afghanistan a republic. (*Background Note: Afghanistan, supra*, at 4-5). His economic and social reforms contributed little, however, to stabilizing political conditions in the country.

Following a Soviet-supported overthrow and assassination of Daoud in April 1978, a Marxist government was formed with the backing of the Soviets. (*Background Note: Afghanistan, supra*, at 5). Sur Muhammad Taraki was installed as the country's president of the revolutionary council. Opposition to the Taraki government increased as many of members of Afghan elites, religious establishments, and intelligentsia were imprisoned, tortured, or murdered. A revolt against the Marxist government occurred in the summer of 1978 and quickly spread into a countrywide insurgency. (*Id.*)

Soviet invasion

Seeking to take advantage of the unrest following the April 1978 coup, the Soviet Union quickly signed a bilateral treaty of friendship and cooperation with the new Afghan regime and increased its military assistance to the regime. See *Background Note: Afghanistan, supra*, at 5-6. Faced with a deteriorating security situation, the Soviets invaded Afghanistan in December 1979, killed the Afghan ruler, and installed Babrak Karmal (an exiled leader of the Parcham faction) as the country's prime minister. (*id.*)

Afghan freedom fighters (*mujahideen*) who opposed the Karmal communist regime, armed with increased weapons and training assistance from the U.S. and its allies, collaborated with other Pesawar-based guerilla groups in the 1980s to destabilize the Karmal regime. See *Background Note: Afghanistan, supra*, at 6-7. The resistance movement eventually led to an agreement known as the Geneva Accords (signed by the front-line states of Pakistan and Afghanistan, the United States, and the Soviet Union). The agreement served to ensure that Soviet forces withdrew from the country in accordance with their expressed commitments in February 1989. (*id.*)

Ascendency of the Taliban

By the mid-1990s, the Taliban had risen to power in reaction to the anarchy and increase of warlords in the aftermath of the withdrawal of Soviet forces. Many of the Taliban had been educated in *madrassas* in Pakistan with roots in rural Pashtun areas of the country. See *Background Note: Afghanistan, supra*, at 7. Beginning with its capture of Kandahar in 1994, the Taliban mounted an aggressive expansion of its control throughout Afghanistan. By the end of 1998, its forces occupied almost 90 percent of the country, and reduced its opposition largely to a small sections of the northeast and the Panjshir valley. (*id.*)

Bolstered by its imposition of an extreme interpretation of Islam on the entire country, the Taliban committed massive human rights violations (particularly directed at women and children), and committed serious atrocities against minority populations. From the mid-1990s, the Taliban provided sanctuary to Osama bin Laden, and provided a base of operations for his and other terrorist organizations. (*Background Note: Afghanistan, supra*, at 7-8). Bin Laden and his Al-Qaida group are known to have provided financial and political support to the Taliban, and acknowledged their responsibility for the September 11, 2001 terrorist attacks against the United States.

Beginning in October 2001 (following the Taliban's refusal to expel bin Laden), the United States and its coalition partners initiated a military campaign, targeting terrorist facilities and Taliban military and political assets within Afghanistan. U.S. military and anti-Taliban forces routed the Taliban and caused their rapid disintegration. After the fall of Kabul in November 2001, a UN-sponsored conference was created to restore stability and governance in Afghanistan. See *Background Note: Afghanistan, supra*, at 7-8. From this conference emerged a Transitional Authority headed by President Hamid Karzai. This authority (renamed the Transitional Islamic State of Afghanistan) was charged with the responsibility of drafting a constitution. (*id.*, at 8)

A new constitution was drafted and ratified by a constitutional loyal *jirga* on January 4, 2004. See *Background Note: Afghanistan, supra*, at 8. The Afghan constitution provides for indirect election of the National Assembly's upper house by the provincial councils and by reserved presidential appointments. On December 4, 2004, the country was renamed the Islamic Republic of Afghanistan. (*id.*; *Country Specific Information: Afghanistan, supra*, at 1). Hamid Karzai was sworn in as Afghanistan's President on December 7, 2004. He presided over the new government's first convened parliament in late 2005. See *Background Note: Afghanistan, supra*.

Presidential and provincial elections in Afghanistan for 2010 were coordinated by the Afghanistan Independent Election Commission (IEC), with assistance from the UN. *Id.* Challenged presidential election results in 2010 have not been widely disseminated. See *Background Note: Afghanistan, supra*, at 8-9.

Political conditions in Afghanistan

A new democratic government assumed control of Afghanistan in 2004 following a popular election. While the national government has continued to expand its authority, it has been hampered in its ability to deliver necessary social services and remains dependent on U.S.-led assistance. See *Background Note: Afghanistan, supra*. With its international community support at work, its ability to secure its borders and maintain internal order is increasing. Although the Taliban-led insurgency in Afghanistan has lost ground in some areas, it remains resilient and capable of challenging U.S. and NATO goals. See *Worldwide Threat Assessment of Intelligence Community*, Director of National Intelligence, *supra*, at 7-8.

International terrorists, fueled by Taliban and Al Qaida support, continue to assert power and intimidation within the country. (*id*) Safety and security remain key concerns because these terrorist organizations continue to target U.S. and Afghan interests by suicide operations, bombings, assassinations, car-jackings, assaults, and hostage-taking. See *Country Reports on Terrorism 2010, supra*, at 9-10; *Country Specific Information, Afghanistan, supra*, at 2-3. Risks of terrorist activity remain extremely high at the present time. See *Administrative Notice, supra*, at 3-4

Human rights conditions in Afghanistan remain poor by all reported accounts. State Department reports confirm active insurgent activity in Afghanistan. See *2010 Human Rights Report: Afghanistan, supra*; No section of Afghanistan is safe or immune from violence. See *Travel Warnings, Afghanistan, supra*. Kabul, in particular, has experienced increased militant attacks in recent years, including rocket attacks, vehicle-borne IEDs, and suicide bombings. *Id*. Foreigners throughout the country continue to be targeted for violent attacks and kidnappings: some motivated by terrorism, and others by common criminal activity. See *Country Specific Information: Afghanistan, supra*.

To date, Afghanistan has still not been able to build effective, honest, and loyal provincial and district institutions and lacks a coherent tribal engagement strategy for unifying the country. See *Worldwide Threat Assessment of the U.S. Intelligence Community, supra*, at 8. The Afghan drug trade remains a major source of revenue for corrupt officials, the Taliban, and other insurgent groups who conduct operations in the country. See *id.* at 8-9; *Country Reports on Terrorism 2010, supra*, at 3.

U.S.-Afghanistan relations

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

The United States and its international partners remain committed to assisting Afghans to realize their aspirations for a stable, democratic, and economically prosperous nation. See *Background Note: Afghanistan, supra*. International troop support for Afghanistan improved in 2010, with added support from six new non-NATO nations. See *Worldwide Threat Assessment of the U.S. Intelligence Community, supra*. Further, Afghanistan neighbors and regional powers retain continuing strategic interests in Afghan stability, transit, and trade agreements. (*Id.*)

The United States also supports the Afghanistan government's commitment to the protection of women's rights, human rights, and religious tolerance. (*id*). Educational

advancements by 2009 reflect increased female enrollment of 37 per cent of the student population in Afghan schools and similar advances in the number of female teachers. (Background Note *Afghanistan*, *supra*, at 15)

Country information on Pakistan

Background information pertaining to Pakistan was furnished by the government as well. Because none of Applicant's family members are citizens or residents of Pakistan, this country's history and political conditions within the country will not be detailed. References to the country are discussed in Department Counsel's administrative notice and cited documents.

Policies

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

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

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following 2(a) factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

Foreign Influence

The Concern: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. See AG ¶ 6.

Burden of Proof

By virtue of the principles and policies framed by the revised AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995) As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

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

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. "[S]ecurity-clearance

determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a respected Afghan cultural instructor for a defense contractor who has family members who are citizens of other countries. Some are citizens and residents of Afghanistan; other are citizens of Afghanistan who reside in Germany. Security concerns are raised under the foreign influence guideline due to Applicant’s longstanding family ties to Afghanistan. Although his contacts with family members residing in Afghanistan appear to be limited, they do involve two of his sisters who are citizens and residents of the country. Afghanistan itself is a country with a somewhat checkered history of wars, political instability, and violence. Afghanistan has also been a strong ally of the United States and its coalition partners, who are committed to rebuilding the country.

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

Because Taliban and Al Qaida insurgents operating in Afghanistan have a history of violating Afghan domestic laws and regulations, as well as international laws, they are more likely to use improper and illegal means, or one of the other, to obtain classified information in Applicant’s possession or control through his family members still residing in Germany and Afghanistan. DC ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” applies.

To date, none of Applicant’s sisters and their spouses residing in Germany and Afghanistan have any history of being subjected to any coercion or influence. These historical antecedents do limit the severity of any potential conflict situation. However, the absence of any past coercive measures taken by Afghan authorities does not completely absolve Applicant from coercive risks in the future given Afghanistan’s considerable history of wars, political instability, violence, hostage taking, and abusive measures taken against its own citizens. For these reasons, ¶ DC 7(b), “connection to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by

providing that information,” has some application to Applicant and his family members residing in Afghanistan.

Still, none of Applicant’s immediate family members or their spouses have any known affiliations or connections with the Afghan government or their military, or any other foreign government. Any potential conflict that might be associated with his sisters and their spouses is small and not likely to pose any conflicts of interest for Applicant in the foreseeable future.

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

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

Applicant’s situation is a special one for reasons that pertain wholly to his unique status and circumstances. Not only has he been careful to avoid any frequent contact with his sisters and spouses in Afghanistan, but he has been scrupulous about making certain his family members are not aware of his Marine Corps assignments that cover Afghan culture and political conditions. In special circumstances involving linguists and cultural instructors who put themselves in harm’s way by working in and out of unstable countries where they have family members residing, the Appeal Board has been quick to note that such individuals are more likely to recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant’s strong connections to the United States and to his U.S. family members, community, and his employment as a cultural instructor translator for Marine Corps

soldiers facing combat tours in Afghanistan make it highly unlikely he would ever resolve any potential conflict against his U.S. interests.

Based on his case-specific circumstances, MC ¶ 8(a), “the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign a foreign individual, group, organization, or government and the interests of the U.S.,” is available to Applicant. Balancing security interests associated with Applicant’s Afghanistan-based family members, conclusions warrant that neither Applicant nor his immediate or extended family residing in Afghanistan pose any unmanageable security risks that could subject them to potential pressures and influence from Afghan government and military officials.

Of benefit to Applicant, too, is MC ¶ 8(b), “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant’s demonstrated loyalty, patriotism, and professional commitments to the U.S. are well demonstrated and sufficient under these circumstances to neutralize all potential conflicts that are implicit in his relationships with his immediate and extended family residing in Afghanistan and Germany.

One other mitigating condition has application to Applicant’s situation. MC ¶ 8(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.” is fully applicable. He has no financial interests in Afghanistan, and has no intention of acquiring any that could create any conflicts in the foreseeable future.

To complete a whole-person assessment of Applicant’s foreign influence risks to ascertain whether they are fully compatible with minimum security clearance eligibility requirements, Applicant’s substantial civilian contributions to U.S. security interests as an Afghan cultural instructor require careful balancing with the raised security concerns. His endorsements and commendations attest to his valuable contributions to U.S. military forces operating in Afghanistan. They are impressive. And Applicant is recognized for the important role he has played in his command’s cultural training, and for the many and substantial contributions he has made to the Marine training commands he has served.

Whole-person assessment is available also to minimize Applicant’s exposure to conflicts of interests with his Afghan family members. Most importantly, Applicant is not aware of any risks of coercion, pressure, or influence that either of his sisters and spouses residing in Afghanistan might be exposed to. So, in Applicant’s case, the

potential risk of coercion, pressure, or influence being brought to bear on him, or any of his respective family members residing in Afghanistan, is minimal and mitigated.

Formal Findings

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

GUIDELINE B (FOREIGN INFLUENCE):	FOR APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant

Conclusions

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

Roger C. Wesley
Administrative Judge

