



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 10-10125
)
Applicant for Security Clearance)

Appearances

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

01/11/2013

Decision

TUIDER, Robert J., Administrative Judge:

Applicant is close to several relatives who were born in Afghanistan and now live in Pakistan. His spouse is close to her family living in Afghanistan. Applicant served honorably as a linguist in Afghanistan, showing bravery, loyalty, and fidelity to the United States and its allies. Several relatives are serving with U.S. forces in Afghanistan as linguists. Foreign influence security concerns are mitigated, and eligibility for access to classified information is granted.

Statement of the Case

On May 24, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (Government Exhibit (GE) 1). On October 10, 2012, the Department of Defense (DOD) issued a statement of reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence). 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the preliminary affirmative finding that it

is clearly consistent with the national interest to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On October 25, 2012, Applicant responded to the SOR and requested a hearing before an administrative judge. On November 14, 2012, Department Counsel was prepared to proceed. On November 21, 2012, DOHA assigned the case to me. Department Counsel and Applicant discussed setting the hearing because of Applicant's deployment schedule to Afghanistan. (Tr. 11-12) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 13) On November 29, 2012, DOHA sent notice of the hearing, setting the hearing on December 19, 2012. The hearing was held as scheduled. I received the transcript of the hearing on January 2, 2013. There were no post-hearing documents submitted as proposed exhibits.

Procedural Rulings

At the hearing, Department Counsel offered four exhibits, and Applicant offered ten exhibits. (Tr. 11-12, 19-20; GE 1-4; AE A-J) Applicant and Department Counsel did not object to my consideration of any exhibits, and I admitted GE 1-3 and AE A-J. (Tr. 11-12)

Department Counsel requested administrative notice be taken of facts concerning Afghanistan and Pakistan. (Tr. 11; Ex. I and II) Department Counsel provided supporting documents to show detail and context for those facts. Applicant did not object, and I granted Department Counsel's request.

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

Findings of Fact

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a to 1.g, and he providing mitigating information. (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 is a 36-year-old employee of a defense contractor, who seeks to return to employment as a linguist or translator in Afghanistan. (Tr. 12-13) He served in Afghanistan from February to April 2010 and from May 2011 to May 2012. In May 2011, he received an interim security clearance. (Tr. 13, 18, 40) In 1994, he earned a general

educational development (GED) diploma. (Tr. 16) Applicant has approximately 60 hours of college credits. (Tr. 17) In 1999, he married, and his spouse is expecting a baby in May 2013. (Tr. 19-20) Applicant does not have any children. (Tr. 20)

Applicant does not own any property or bank accounts in Pakistan or Afghanistan. (Tr. 31) In 1996, he became a U.S. citizen. (Tr. 32) He is registered to vote in the United States. (Tr. 32) He owns two houses in the United States. (Tr. 32) His bank and 401(k) accounts are in the United States. (Tr. 50) He is a member of a neighborhood association. (Tr. 46) Applicant and his spouse intend to remain in the United States. (Tr. 33) One of Applicant's brothers is a U.S. resident, and he has four children. (Tr. 33) His brother has been serving over a year as linguist in Afghanistan. (Tr. 33, 52) His brother has a security clearance. (Tr. 52)

Applicant's father worked for the U.S. Government in Afghanistan from 1959 to 1980 and for the U.S. Government in Pakistan from 1980 to 1986. (Tr. 14; AE H) For most of those years, he was a driver and chauffeur. (AE H) Applicant's father received or was cited in numerous letters of appreciation and commendation and certificates for his safety record and assistance to various visiting and assigned U.S. officials. (AE H) He received letters of commendation from the U.S. Ambassador to Afghanistan and his agency's director. (AE H) In 1986, Applicant, his father, and two brothers immigrated to the United States from Pakistan. (Tr. 14-15) Applicant was 10 years old when he came to the United States. (Tr. 16)

One of Applicant's brothers stayed in the United States and became a U.S. citizen. (Tr. 27, 29) Applicant's oldest brother returned to Afghanistan. (Tr. 27) It has been many years since Applicant has communicated with his oldest brother. (Tr. 27) Applicant's brother was involved in illegal drugs in Canada. (Tr. 35) His oldest brother and Applicant's father got in trouble, and Applicant's father served more than a year in jail in Canada for a drug offense. (Tr. 27, 35, 37-38) His father was deported from Canada to the United States, and then he received notice that he was being deported from the United States. (Tr. 27, 35) He voluntarily left the United States and returned to Pakistan in the 1990s. (Tr. 27, 35) Applicant's father disowned Applicant's brother in the late 1990s. (Tr. 28) Applicant explained:

My father is the kind of guy, as you can see from the letters of recommendation that he's gotten throughout the years from [the U.S. Government in Afghanistan and Pakistan], that he's a simple man and he likes to treat others the way he wants to be treated. He doesn't like anyone doing illegal stuff or anything like that, so he disowned him. We haven't had anything to do with him I want to say since the late '90s or so. (Tr. 28)

Applicant's father is a citizen of Afghanistan residing in Pakistan. (Tr. 22) His father is retired. (Tr. 22) He communicates with his father at least once a week, and Applicant sends his father about \$400 monthly. (Tr. 23, 25) Applicant has been sending his father funds for about 15 years. (Tr. 39)

Applicant's stepmother is a citizen of Afghanistan residing in Pakistan with Applicant's father. (Tr. 25) She does not work outside her home. (Tr. 25) Applicant is sponsoring his father and stepmother's move to the United States. (Tr. 26)

In 2012, Applicant's spouse became a U.S. citizen, and she resides in the United States with Applicant. (Tr. 20; AE A) They met in Afghanistan, got married in Pakistan, and she moved to the United States in 2001. (Tr. 20) His spouse was employee of the year and employee of the month several times at the assisted living residence where she works. (Tr. 21; AE A)

Applicant sponsored his sister to become a resident of the United States, and she moved to the United States in 2008. (Tr. 43-44; AE B) She is a permanent resident of the United States. (Tr. 49) She is married to a citizen of Afghanistan, who is a permanent U.S. resident, and they have three children. (Tr. 43; AE C) They moved out of Applicant's house in late December 2012. (Tr. 43; AE B) In 2009 and 2010, Applicant's brother-in-law, who is a citizen of the United States, served with U.S. forces in Afghanistan. (Tr. 43; AE C)

Applicant's two half-brothers and niece are citizens of Afghanistan residing in Pakistan. (Tr. 29) His half-brothers are in their early 20s, and they attend school. (Tr. 29-30) They live with Applicant's father. (Tr. 30) Applicant sponsored his niece to immigrate to the United States, and she is waiting for her U.S. visa to move to the United States. (AE F; SOR response)

Applicant's parents-in-law and siblings-in-law are citizens and residents of Afghanistan. (Tr. 30-31) His father-in-law is a retired doctor. (Tr. 31) His mother-in-law has a business in her house. (Tr. 31) Several siblings-in-law are attending school; however, most of them are married. (Tr. 31, 42-43) His spouse communicates with her family in Afghanistan two or three times a week. (Tr. 41) He communicates with his in-laws in Afghanistan on holidays when his spouse telephones them. (Tr. 33-34) His in-laws have not traveled to the United States to visit Applicant. (Tr. 34) When his father-in-law was ill, Applicant's spouse sent him some money, and they probably send her family in Afghanistan about \$250 a year. (Tr. 41)

Two of Applicant's nephews are linguists serving with the U.S. Marines in Afghanistan, and one of them was injured by a suicide attack and evacuated to Germany for treatment. (Tr. 52; AE D) He was awarded a medal for injuries received in action supporting Operation Enduring Freedom (OEF). (AE D) One of his nephews went on over 100 combat-related missions with the U.S. Marines in Afghanistan. (AE D) They both received certificates and letters supporting their applications for U.S. citizenship and contributions to U.S. efforts in OEF. (AE D, E)

Applicant and his spouse traveled to Afghanistan in 2005. (Tr. 34) Applicant went to Pakistan in 1991, 1996, 1999, 2001, 2004, and 2005. (Tr. 39; GE 4) He emphasized that he has not been back to Pakistan since 2005. (Tr. 40) While deployed to Afghanistan, he did not have any contact with family in Afghanistan. (Tr. 40)

Applicant served with a North Atlantic Treaty Organization (NATO) unit in Afghanistan, and most of his work involved assisting in interrogation of detainees. (Tr. 48) Applicant considers himself to be 100 % American. (Tr. 48)

Character Evidence

Applicant provided nine letters of recommendation.¹ They are primarily from his work environment in the United States and Afghanistan. They describe him as courteous, friendly, professional, diligent, and trustworthy.

Applicant's site supervisor in Afghanistan for one year stated:

I have nothing but praise for his hard work and professional[ism]. I honestly cannot remember ever having an issue or problem with him during his work for me. I can also say that the units of the . . . Military that [he] supported had nothing but praise for his work. And even now would like to see him return to work for them.

A squadron commander who served with Applicant in Afghanistan emphasized his proficiency and contributions to mission accomplishment. (AE H) He described him as tireless, diligent, quiet, trustworthy, and methodical. He "is a consummate professional, dependable and approachable individual with a gentle demeanor and ready sense of humor. He is punctual, courteous and respected by all of his peers. He would be a great asset to any employer."

Applicant provided 15 certificates awarded for completion of several courses, contributions to his employers, and service in Afghanistan. (AE J)

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.

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 Afghanistan, 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-Qaeda and the Taliban continue to assert power and intimidation within the

¹The sources for the information in this section are at AE I.

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: to disrupt, dismantle, and defeat al-Qaeda and its safe havens in Pakistan, and to prevent their return to Afghanistan. . . . [T]he United States plans to remain politically, diplomatically, and economically engaged in Afghanistan for the long term.

U.S. Department of State, *Background Note: Afghanistan*, Nov. 28, 2011 at 13. The United States has more combat troops deployed to Afghanistan than to any other foreign country. The U.S. Government plans to withdraw combat troops from Afghanistan in the next two years. The United States' extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to citizens and residents of Afghanistan and Afghan Government problems developing and complying with the rule of law.

Pakistan

Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States and an international coalition in Operation Enduring Freedom to remove the Taliban from power in Afghanistan. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan, the Khyber Pakhtunkhwa (Kpk), and in the Balochistan Province, which borders Iran and Afghanistan.

The Taliban, Lashkar e-Tayyiba (LT), the Haqqani Network, and al-Qaida operate in Pakistan, and in some instances elements of the Pakistani Government may

be covertly aiding these terrorist or anti-U.S. entities. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. It is likely that in November 2008 LT was responsible for the attack in Mumbai, which caused numerous casualties. The Haqqani Network attacked the U.S. Embassy in Kabul in September 2011. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Afghanistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to al Qaida and a number of foreign and Pakistan-based extremist groups. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremists groups, al-Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies. Al-Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistani civilians and security force personnel.

The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Since 2007, several American citizens present in Pakistan have been kidnapped for ransom or other personal reasons. The human rights situation in Pakistan remains poor. Extrajudicial killings, torture, and disappearances occur. Arbitrary arrests, governmental and police corruption is widespread, and the Pakistani government maintains several domestic intelligence agencies to monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicate that authorities use wiretaps and monitor mail without the requisite court approval, and also monitor phones and electronic messages. In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems. In the aftermath of Pakistan's development of nuclear weapons, the United States cut-off military aid to Pakistan for several years.

After September 11, 2001, Pakistan pledged its alliance with the United States in counterterrorism methods. Pakistan committed to elimination of terrorist camps on the Pakistan-Afghanistan border and subsequently sent thousands of troops and sustained hundreds of casualties in this effort. Overall, Pakistan has intensified counterinsurgency efforts, and demonstrated determination and persistence in combating militants. The United States is engaging in a substantial effort to bolster Pakistan's military forces and security. In 2003, President Bush announced that the United States would provide Pakistan with \$3 billion in economic and military aid over the next five years beginning in 2005.

On May 1, 2011, U.S. forces raided a compound in Pakistan and killed Osama bin Laden, the leader of al-Qaida. The raid raised concerns that the Pakistani Government had knowingly permitted terrorists, militants, and insurgents to find safe havens in Pakistan.

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

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 four conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

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

(e) 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.

AG ¶¶ 7(a), 7(b), 7(d), and 7(c) apply. Applicant, his father, siblings, spouse, in-laws, step-mother, half-siblings, niece, and nephews were all born in Afghanistan. His father, step-mother, one brother, and half-siblings live in Pakistan, and his in-laws all currently live in Afghanistan. He has frequent contact with his father, and his spouse has frequent contact with her family in Afghanistan. He provides his father \$400 monthly for support. His spouse sends about \$250 a year to her family in Afghanistan. He and his spouse care about the welfare of their families living in Afghanistan and Pakistan. Applicant went to Pakistan in 1991, 1996, 1999, 2001, 2004, and 2005; however, he has not been back to Pakistan since 2005. There are safety issues for people living in Afghanistan and Pakistan, just as there are for hundreds of Afghan linguists supporting U.S. forces, who have family living in Afghanistan and Pakistan. Thousands of U.S. and coalition armed forces and civilian contractors serving in Afghanistan are targets of terrorists or the Taliban, along with Afghan civilians who support the Afghan Government and cooperate with coalition forces. Applicant's in-laws are not receiving any special protection from terrorists or the Taliban from the Afghan or U.S. Governments. Applicant's family in Pakistan is not receiving any special protection from the Pakistani Government.

The mere possession of close family ties with a family member living in dangerous countries, such as Afghanistan and Pakistan, 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 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 and Pakistan 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 and his spouse's relationships with her 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 family members or in-laws living in dangerous countries.

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 or Pakistan 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 and Pakistan has an enormous problem with terrorism. Applicant’s relationship with family members living in Pakistan and his spouse’s relationship with her family living in Afghanistan creates a potential conflict of interest because these relationships are 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 his spouse’s contacts with her family in Afghanistan. This has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) 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 has frequent contact with his father living in Pakistan, and his spouse has frequent contact with her family in Afghanistan. Applicant provides \$400 monthly to support his father. His spouse sends about \$250 a year to her family in Afghanistan. He and his spouse's loyalty and connections to their families living in Afghanistan and Pakistan are a positive character trait. However, for security clearance purposes, those same connections 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) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. Applicant moved to the United States when he was 10 years old, and he is now 36 years old. He is a U.S. citizen. He has taken some college classes in the United States. Department of Defense contractors have employed him as a linguist and cultural advisor since 2010. Most importantly, Applicant wants his security clearance so that he can return to Afghanistan and assist U.S. Armed Forces, knowing that he will be in a dangerous combat environment. 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 Pakistan, and his spouse's relationships with her family living in Afghanistan. He frequently communicates with his father living in Pakistan, and she frequently communicates with her family living in Afghanistan. There is no evidence, however, that terrorists, criminals, the Afghan Government, or those conducting espionage have approached or threatened Applicant, his family, his spouse, or her family to coerce Applicant for classified or sensitive information.² As such, there is a reduced possibility that Applicant, his spouse or their families living in Pakistan or Afghanistan would be specifically selected as targets for improper coercion or exploitation. On the other hand, families living in Pakistan and Afghanistan are at risk from terrorists and the Taliban.

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

²There 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.

and Pakistan, and Applicant has supported U.S. goals and objectives in Afghanistan. Applicant and his in-laws living in Afghanistan and his family in Pakistan 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 could theoretically add some risk to Applicant and his family from lawless elements in Afghanistan and Pakistan.

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, AG ¶ 7(e) has some application as Applicant sends \$400 monthly to his father living in Pakistan, and his spouse sends about \$250 a year to her family in Afghanistan. All of Applicant's assets are in the United States, including two houses, a bank account, a 401(k) account, and his employment. Applicant and his spouse's financial connections to Pakistan and Afghanistan are limited in comparison with his property interests in the United States. To the extent that AG ¶ 7(e) applies, it is mitigated by AG ¶ 8(f).

In sum, Applicant's connections to family living in Pakistan and his spouse's connections to her family in Afghanistan are significant; however, his U.S. Government employment, performance of linguist duties in a combat zone, and U.S. citizenship are more significant. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B. Foreign influence concerns under Guideline B are mitigated; however, assuming AG ¶ 8(b) is not applicable, security concerns are separately mitigated under the whole-person concept, *infra*.

Whole-Person Concept

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

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

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

of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are foreign influence security concerns arising from Applicant's family living in Pakistan and his spouse's family living in Afghanistan. Applicant, his father, step-mother, half-siblings, siblings, spouse, and in-laws were born in Afghanistan. He frequently communicates with his father and his spouse frequently communicates with her family living in Afghanistan. His family in Pakistan and her family in Afghanistan are at a greater risk due to Applicant's position as a linguist and, if his clearance is granted, there is a theoretical increase in the risk to his family in Pakistan and her family in Afghanistan.

The factors weighing towards approval of Applicant's security clearance are more substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations. He supported numerous combat missions in Afghanistan and made substantial contributions to the NATO mission at great personal risk. He wishes to return to Afghanistan and serve with U.S. Armed Forces as a linguist and translator, risking 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 his family members in Pakistan and his spouse's family 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). Applicant does not own property in Afghanistan. When he was naturalized as a U.S. citizen, he swore allegiance to the United States. His desire for employment as a translator and recommendations document his outstanding performance as a translator, loyalty, trustworthiness, and reliability, and they weigh heavily towards approval of his security clearance.

A Guideline B decision concerning Afghanistan and Pakistan must take into consideration the geopolitical situation and dangers there.³ Afghanistan and Pakistan are very dangerous places because of violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the Afghan and Pakistani Governments, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The Afghan and Pakistani Governments do not fully comply with the rule of law or protect civil liberties in many instances. Applicant's linguist duties in Afghanistan will be personally dangerous. The United States, Pakistani, and Afghan Governments are allies in the war on terrorism. The United States is committed to the establishment of free and independent Afghan and Pakistani Governments. Afghanistan, Pakistan, and the United States have close relationships in diplomacy and trade.

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

Applicant's father served the U.S. Government in Pakistan and Afghanistan for more than 25 years. When Applicant's older brother engaged in criminal activity, Applicant's father disowned him. His father's conviction in Canada for a drug offense was more than 10 years ago. Applicant's brother, brother-in-law, and two nephews are or have served as linguists with U.S. forces in Afghanistan. One nephew was injured while in combat with the U.S. Marines. Applicant is a particularly effective and professional linguist who provided important contributions to accomplishment of the NATO mission. I have carefully assessed Applicant's demeanor and sincerity at his hearing, and I find his statements to be credible.

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 Applicant has carried his burden and foreign influence concerns are mitigated. Eligibility for access to classified information is granted.

Formal Findings

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.i: For Applicant

Conclusion

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

Robert J. Tuider
Administrative Judge