



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



In the matter of:)
)
-----) ISCR Case No. 11-04568
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

06/13/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence and personal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On April 30, 2002, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).¹ On February 27, 2008, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).² On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on June 27, 2011.³ On another unspecified date, the DOHA issued him a set of interrogatories. He responded to the

¹ Government Exhibit 5 ((2002 SF 86), dated April 30, 2002).

² Government Exhibit 1 ((2008 SF 86), dated February 27, 2008).

³ Government Exhibit 3 (Applicant's Answers to Interrogatories, dated June 27, 2011).

interrogatories on July 25, 2011.⁴ DOHA issued a Statement of Reasons (SOR) to him on October 26, 2011, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines B (Foreign Influence) and E (Personal Conduct), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

The record is silent as to when Applicant acknowledged receipt of the SOR. In a sworn statement, dated December 8, 2011, Applicant elected to have his case decided on the written record in lieu of a hearing. In two subsequent sworn statements, dated January 27, 2012, and March 30, 2012, Applicant again responded to the SOR allegations, but requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on April 26, 2012, and the case was assigned to me on May 4, 2012. A Notice of Hearing was issued on May 10, 2012, and I convened the hearing, as scheduled, on May 30, 2012.

During the hearing, five Government exhibits (GE 1 through 5) and nine Applicant exhibits (AE A through I) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on June 7, 2012.

Rulings on Procedure

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Islamic Republic of Afghanistan (Afghanistan), appearing in six U.S. Government publications. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Afghanistan in publications of the U.S. Department of State⁵ and the Director of National Intelligence.⁶

⁴ Government Exhibit 2 (Applicant's Answers to Interrogatories, dated July 25, 2011).

⁵ U.S. Department of State, Bureau of South and Central Asian Affairs, *Background Note: Afghanistan*, dated November 28, 2011; U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Afghanistan*, dated February 7, 2012; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2010 Human Rights Report: Afghanistan*, dated April 8, 2011; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2010*, dated August 18, 2011; and U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Afghanistan*, dated December 1, 2011.

⁶ Director of National Intelligence, *Unclassified Statement for the Record on the Worldwide Threat Assessment of the U.S. Intelligence Community for the House Permanent Select Committee of Intelligence*, dated February 2, 2012.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,⁷ as set forth below under the Afghanistan subsection.

Findings of Fact

In his Answers to the SOR, Applicant admitted, with explanations, all of the factual allegations pertaining to foreign influence (§§ 1.a. through 1.c.) of the SOR, as well as the factual allegations pertaining to personal conduct (§§ 2.a. through 2.c.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 69-year-old employee of a defense contractor who, from November 2008 until November 2009, served as a linguist and cultural instructor.⁸ He was previously employed by the U.S. Government overseas from September 1962 until April 1964; in a restaurant from November 1986 until April 1992; as a cab driver from January 1991 until December 2001; as well as by various U.S. companies as an interpreter, linguist, or language instructor from December 2001 until October 2009.⁹ Applicant has never served in the U.S. military.¹⁰ He was granted a U.S. top secret security clearance on an unspecified date, but that clearance was suspended (and he lost his job) in November 2009, following the issuance of the SOR.¹¹

Applicant served as a civilian linguist for the U.S. Army in support of Operation Enduring Freedom at a military facility in the United States and in Afghanistan; as a language and cultural instructor with the U.S. Marine Corps in the Pacific and Far East prior to deployments to Afghanistan; as a language and cultural instructor as part of interagency integrated civilian-military training for civilians bound for service to the U.S. Mission in Afghanistan on behalf of the U.S. Department of State Foreign Service Institute and the Indiana National Guard; as a pre-deployment language and cultural instructor for a U.S. Army at a military facility in the United States; and as a language

⁷ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

⁸ Government Exhibit 3 (Resume, undated).

⁹ Government Exhibit 3, *supra* note 8; Government Exhibit 1, *supra* note 2, at 10-16; Government Exhibit 5, *supra* note 1, at 11-12.

¹⁰ Government Exhibit 1, *supra* note 2, at 25.

¹¹ Tr. at 6, 35.

and cultural instructor for the U.S. Army and U.S. Air Force.¹² He has been cited by senior military officials for his unparalleled dedication and professionalism, as well as his devotion and selfless service.

Foreign Influence

Applicant was born in Afghanistan.¹³ Both of his parents (his father was a farmer and his mother, a housewife)¹⁴ were born in Afghanistan, and they are now deceased.¹⁵ Nothing is known regarding his early years or primary education. He immigrated to the U.S. in 1963 or 1964,¹⁶ and became a naturalized U.S. citizen in 1990.¹⁷ Applicant attended what he described as an “Americanization” school in the United States¹⁸ before enrolling in a U.S. university in August 1968, where he received a certificate in marketing in May 1970.¹⁹

Applicant was married in February 1974,²⁰ and he and his wife have three children, born in the United States in February 1975, October 1976, and March 1983.²¹ Applicant’s wife was born in Afghanistan in 1952, and she became a naturalized U.S. citizen in 1995.²² The family resides in the United States,²³ where one daughter and his son work for the U.S. Government and his other daughter is a medical professional.²⁴ Both of his wife’s parents (her father was an officer in the Afghan military and her mother was a housewife)²⁵ were born in Afghanistan, and they are now deceased.²⁶

¹² Government Exhibit 3, *supra* note 8; Government Exhibit 3 (Foreign Travel chart, undated), at 2; Applicant Exhibit C (Letter of Appreciation, dated April 3, 2009); Applicant Exhibit D (Certificate of Appreciation, dated July 28, 2010); Applicant Exhibit E (Certificate of Appreciation, undated (for service ending February 2012)); Applicant Exhibit F (Certificate of Appreciation, dated April 30, 2010). *See also*, Applicant Exhibit G (Photographs of Applicant with commanders, supervisors, coworkers, and students, undated); Applicant Exhibit I (Photographs of Applicant with coworkers and students, undated).

¹³ Government Exhibit 1, *supra* note 2, at 6.

¹⁴ Government Exhibit 3 (Relatives and Associates chart, undated), at 1.

¹⁵ Government Exhibit 1, *supra* note 2, at 21-22; Government Exhibit 3, *supra* note 14, at 1.

¹⁶ Government Exhibit 3 (Foreign Travel chart), *supra* note 12, at 1-2; Tr. at 34.

¹⁷ Government Exhibit 1, *supra* note 2, at 7.

¹⁸ Tr. at 34.

¹⁹ Government Exhibit 1, *supra* note 2, at 9-10.

²⁰ Government Exhibit 1, *supra* note 2, at 18.

²¹ Government Exhibit 1, *supra* note 2, at 22-23; Tr. at 35.

²² Government Exhibit 1, *supra* note 2, at 18-19.

²³ Government Exhibit 1, *supra* note 2, at 22-23.

²⁴ Government Exhibit 3, *supra* note 14, at 1.

²⁵ Government Exhibit 3 (Relatives and Associates chart), *supra* note 14, at 1.

Applicant also has a brother who was born in Afghanistan and remains a citizen and resident of Afghanistan.²⁷ When the Soviet Union invaded Afghanistan in 1979, and continued to occupy it until 1989, and the Taliban subsequently controlled the country, Applicant lost contact with his brother, and after many years of no contact between the two, Applicant assumed his brother was dead.²⁸ In 2008, several years after the Taliban were driven from control of the Afghan Government, Applicant first learned that his brother was alive in a refugee camp in Pakistan.²⁹ His brother is now in his 80s, and is retired.³⁰ Applicant speaks with his brother by telephone three or four times per year.³¹ Applicant also has several brothers-in-law and sisters-in-law, all of whom were born in Afghanistan, but who are naturalized U.S. citizens residing in the United States.³² With the exception of Applicant's father-in-law, no member of Applicant's immediate or extended family have ever been associated with the Afghan military or intelligence service.³³

In June 2009, while she was a graduate student at a U.S. university, one of Applicant's daughters received an internship at an Afghan Ministry, jointly sponsored by the university as a practicum and the Ministry.³⁴ Applicant and his wife accompanied their daughter to Afghanistan, and remained there for about two weeks until the internship was completed.³⁵ While in Afghanistan, Applicant visited with his brother for the first time in nearly five decades.³⁶

Applicant's brother has a neighbor in Afghanistan, who is an Afghan citizen and officer in the Afghan military. Applicant met the individual briefly in June 2009 while Applicant was visiting his brother and the neighbor came by to say hello.³⁷ The neighbor has called Applicant on about three occasions since 2009, generally seeking over-the-

²⁶ Government Exhibit 1, *supra* note 2, at 23-24; Government Exhibit 3 (Relatives and Associates chart), *supra* note 14, at 1.

²⁷ Government Exhibit 3 (Relatives and Associates chart), *supra* note 14, at 1.

²⁸ Tr. at 58; Government Exhibit 3, *supra* note 3, at 7.

²⁹ Tr. at 58.

³⁰ Government Exhibit 3 (Relatives and Associates chart), *supra* note 14, at 1.

³¹ Government Exhibit 3 (Relatives and Associates chart), *supra* note 14, at 1.

³² Government Exhibit 3 (Relatives and Associates chart), *supra* note 14, at 2.

³³ Government Exhibit 3 (Relatives and Associates chart), *supra* note 14, at 1-2.

³⁴ Applicant Exhibit A (Affiliation Agreement, dated June 1, 2009); Tr. at 37.

³⁵ Government Exhibit 3 (Foreign Travel chart), *supra* note 12, at 2-3; Tr. at 37.

³⁶ Government Exhibit 3, *supra* note 3, at 7; Tr. at 38.

³⁷ Government Exhibit 3, *supra* note 3, at 7; Government Exhibit 2 (Personal Subject Interview, dated January 25, 2011), at 1; Tr. at 39.

counter medications that are not available in Afghanistan.³⁸ They have had no other relationship.³⁹

Afghanistan

Formerly under the control of the United Kingdom, Afghanistan received independence in August 1919. It is a rugged and mountainous country in Southwestern Asia, approximately the size of Texas, and has common borders with Pakistan on the east and the south, Iran on the west, and Russia on the north. In 2009, the population was about 28 million people. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979, occupation by the Soviet Union until 1989, and civil war between the occupiers and home-grown freedom fighters, known as mujaheddin. Anarchy ensued, and fighting continued among the various ethnic, clan, and religious warlords and their respective militias even after the Soviet Union withdrew from the country. By the mid-1990s, the Taliban rose to power and controlled significant portions of the country, imposing repressive policies and sharia law, guiding all aspects of Muslim life. Afghanistan became a sanctuary for terrorist groups.

After the September 11, 2001 terrorist attacks in the United States, U.S. demands that Afghanistan expel Osama Bin-Laden and his followers were rejected by the Taliban. In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power. Following a few years of governance by an interim government, a democratic presidential election took place in October 2004, and a new democratic government took power. Despite the election, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. Terrorists continue to target United States and Afghan interests through suicide bombings, assassinations, and hostage taking.

Afghanistan's human rights record remains poor, for there are continuing extrajudicial killings; torture and other abuse; widespread official corruption and impunity; ineffective government investigations of abuses by local security forces; arbitrary arrest and detention; judicial corruption; violations of privacy rights; violence and societal discrimination against women; sexual abuse of children; trafficking in persons; and restrictions on freedoms of religion, the press, assembly, and movement.

Taliban insurgents retain the capability and intent to conduct attacks and kidnappings of Americans, other Western nationals, and members of the local populace. The U.S. has made a long-term commitment to help Afghanistan rebuild itself after decades of war, and along with others in the international community, provides substantial assistance, focusing on reintegration, economic development, improving relations with Afghanistan regional partners, and steadily increasing the security responsibilities of the Afghan security forces. Furthermore, there is increased terrorist support coming into Afghanistan from Pakistan and Iran. Not only has the security

³⁸ Government Exhibit 3, *supra* note 3, at 8; Government Exhibit 2, *supra* note 37, at 1; Tr. at 40.

³⁹ Tr. at 41.

situation remained volatile and unpredictable throughout Afghanistan, but there are also tensions between the U.S. and Afghanistan over limiting U.S. military operations.

Personal Conduct

On April 30, 2002, when Applicant completed and submitted his 2002 SF 86, he responded to questions set forth therein. The SOR alleges Applicant falsified material facts when he deliberately failed to disclose complete information regarding his brother, father-in-law, and mother-in-law in response to § 19: Your Relatives and Associates. While it is alleged that there were 19 categories of relationships that he was required to list, if not already listed elsewhere in the 2002 SF 86, if Applicant or his wife were bound to them by affection, obligation, or close continuing contact, the document in evidence contains no such guidelines or instructions. While Applicant listed several of his relatives, he did not list his brother, father-in-law, or mother-in-law, all of whom were already deceased or presumed deceased. He denied the omission was deliberate or an attempt to falsify the material facts.⁴⁰ Applicant explained that his supervisor assisted him in preparing his response to the question, and Applicant was never asked about his brother, father-in-law, or mother-in-law.⁴¹

On February 27, 2008, when Applicant completed and submitted his 2008 SF 86, he responded to questions set forth therein. The SOR alleges Applicant falsified material facts when he deliberately failed to disclose complete information in response to § 14/15: Your Relatives and Associates. There were 19 categories of relationships that he was required to list, if not already listed elsewhere in the 2008 SF 86, if Applicant or his wife were bound to them by affection, obligation, or close continuing contact. While Applicant listed several of his relatives, this time he did not list his brother, whom he presumed was deceased.⁴² He denied the omission was deliberate or an attempt to falsify the material facts. Applicant explained that he was assisted in preparing his response to the question, and Applicant was never asked about his brother.⁴³

In October 2009, Applicant was interviewed by an investigator representing the U.S. Government. Applicant was tasked with completing a list of relatives and associates, regardless if they are alive or deceased, and he did so by furnishing a handwritten list of 16 individuals, including 4 who were listed twice.⁴⁴ The list was placed in the proper format and typed by someone other than Applicant.⁴⁵ The list did not include his brother. The SOR alleges Applicant falsified material facts when he deliberately failed to disclose complete information on the list by not including his

⁴⁰ Tr. at 56-57.

⁴¹ Tr. at 57-58.

⁴² Tr. at 60.

⁴³ Tr. at 59.

⁴⁴ Government Exhibit 4 (List of Relatives and Associates, dated October 28, 2009).

⁴⁵ Tr. at 61.

brother. However, when Applicant reviewed the typewritten version of the list, he noticed that his brother's name was not listed, so he added it in writing at the bottom of the first page.⁴⁶ He denied the omission was deliberate or an attempt to falsify the material facts.⁴⁷

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."⁴⁸ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."⁴⁹

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."⁵⁰ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the

⁴⁶ Tr. 61-62; Government Exhibit 3 (Relatives and Associates chart), *supra* note 14, at 1.

⁴⁷ Tr. at 63.

⁴⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵⁰ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁵¹

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁵²

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."⁵³ 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 as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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

⁵¹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁵² *Egan*, 484 U.S. at 531

⁵³ See Exec. Or. 10865 § 7.

States citizens to obtain protected information and/or is associated with a risk of terrorism.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁵⁴ Applicant's varied relationships with brother and one acquaintance, both of whom are Afghan citizens who still reside in Afghanistan, as well as Applicant's daughter who is a U.S. born citizen-resident, are current security concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 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*" is potentially disqualifying. Similarly, under AG ¶ 7(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*" may raise security concerns. Also, under AG ¶ 7(f), "*failure to report, when required, association with a foreign national,*" is potentially disqualifying. I find AG ¶¶ 7(a), 7(b), and 7(f) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his brother and one acquaintance who are Afghan citizen-residents, and Applicant's daughter who is a U.S. born citizen-resident, to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where:

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.

Similarly, AG ¶ 8(b) may apply where the evidence shows:

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

⁵⁴ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

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.

In addition, AG ¶ 8(c) may apply where “*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.*”

In assessing whether there is a heightened risk because of an applicant’s relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant’s conduct and circumstances, in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.⁵⁵ In fact, the Appeal Board has cautioned against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”⁵⁶

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

As noted above, since October 2001, when U.S. forces and coalition partners led military operations in Afghanistan, forcing the Taliban out of power, there has been first an interim government, and then a democratic government in Afghanistan. Nevertheless, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within the country. It is less likely that the Afghan government would attempt coercive means to obtain sensitive information. The real concern in this instance is not the Afghan government, but rather al-Qaida and Taliban terrorists. Applicant’s brother, a refugee for decades until 2008, still resides in Afghanistan and there is substantial risk – a “heightened risk” – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. There is no evidence that Applicant’s brother is or has been a political activist, challenging the policies of the Afghan government; that terrorists have approached or threatened Applicant or his brother for any reason; that the Afghan government, al-Qaida, or the Taliban have approached Applicant; or that his brother currently engages in activities that would bring attention to himself. As such, there is a reduced possibility that they would be targets for coercion or

⁵⁵ See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

⁵⁶ ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

exploitation by the Afghan government, al-Qaida, or the Taliban, which may seek to quiet those who speak out against them.

Also, as noted above, in June 2009, while she was a graduate student at a U.S. university, one of Applicant's daughters received an internship at an Afghan Ministry, jointly sponsored by the university as a practicum and the Ministry. Applicant and his wife accompanied their daughter to Afghanistan, and remained there for about two weeks until the internship was completed. They returned to the United States. Under those circumstances, there is no continuing substantial risk of any kind of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

Applicant met his brother's neighbor, a member of the Afghan military, briefly in June 2009. The neighbor has called Applicant on about three occasions since 2009, generally seeking over-the-counter medications that are not available in Afghanistan. They have had no other relationship.

Applicant has significant connections to the United States, having lived in the United States for nearly five decades. With the exception of his brother, Applicant's immediate and extended family members all reside in the United States. Moreover, he wants his security clearance 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, and has shown his patriotism, loyalty, and fidelity to the United States. Applicant has met his burden of showing there is little likelihood that his somewhat distant relationship (after nearly five decades of no relationship) with his brother, or his brief contact with his brother's neighbor, could create a risk for foreign influence or exploitation. Applicant has "such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶¶ 8(a), 8(b), and 8(c) apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes two conditions that could raise security concerns. Under AG ¶ 16(a), security concerns may be raised when there is a:

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” is potentially disqualifying.

Similarly, under AG ¶ 16(b), “*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative,*” may raise security concerns.

Applicant’s omissions in his responses to the inquiries in his 2002 SF 86 and 2008 SF 86 of critical information pertaining to foreign contacts, provides sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely the result of misunderstanding, as he contends. In the 2002 SF 86, Applicant listed several of his relatives, but he did not list his brother, father-in-law, or mother-in-law, all of whom were already deceased or presumed deceased, and explained that his supervisor assisted him in preparing his response to the question, and Applicant was never asked about his brother, father-in-law, or mother-in-law. He denied the omission was deliberate or an attempt to falsify the material facts.

When Applicant completed and submitted his 2008 SF 86, he responded to a similar question, but this time he did not list his brother, whom he presumed was deceased. Once again, Applicant explained that he was assisted in preparing his response to the question, and Applicant was never asked about his brother. He denied the omission was deliberate or an attempt to falsify the material facts.

In October 2009, when Applicant was interviewed by an investigator representing the U.S. Government, he was tasked with completing a list of relatives and associates, regardless if they are alive or deceased, and he did so by furnishing a handwritten list of 16 individuals, including 4 who were listed twice. The list was placed in the proper format and typed by someone other than Applicant. The list did not include his brother. When Applicant reviewed the typewritten version of the list, he noticed that his brother’s name was not listed, so he added it in writing at the bottom of the first page. He denied the initial omission was deliberate or an attempt to falsify the material facts.

I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. It is my impression that his misunderstandings were real and his explanations are consistent. Considering the quality of the other evidence before me, they have the solid resonance of truth. I find Applicant’s explanations are credible in his denial of deliberate falsifications. AG ¶¶ 16(a) and 16(b) have not been established.

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵⁷

There is some evidence against mitigating Applicant's situation, because his elderly, brother who is an Afghan citizen-resident, is at risk from al-Qaida and Taliban terrorists. (See AG ¶ 2(a)(8).)

The mitigating evidence under the whole-person concept is more substantial. Applicant has offered to continue to risk his life to support the United States' goals in Afghanistan, and has shown his patriotism, loyalty, and fidelity to the United States. He is fully aware of the risks to himself and his brother from al-Qaida and Taliban terrorists. 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.⁵⁸ With the vast majority of his family and extended family members residing in the United States, there is a reduced "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion. As for the personal conduct issues, it is apparent that Applicant's actions regarding a similar question were due to misunderstandings rather than deliberate actions. Once the status of his brother became known to Applicant, he corrected the form typed for him, and there has been no recurrence of a similar issue. It is unlikely to recur. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

⁵⁷ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

⁵⁸ See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge