



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 11-15261

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

01/10/2013

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On February 14, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ The Department of Defense (DOD) issued a Statement of Reasons (SOR) to him on August 16, 2012, under 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 Guideline B (Foreign Influence) and detailed reasons

¹ Item 10 (SF 86), dated February 14, 2011).

why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The DOD adjudicators recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on September 20, 2012. In a sworn statement, dated September 21, 2012, Applicant elected to have his case decided on the written record in lieu of a hearing.² A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on December 6, 2012, and he was afforded an opportunity, within 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on December 23, 2012, and timely submitted additional documents to which Department Counsel had no objections. The case was assigned to me on January 4, 2013.

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 ten U.S. Government publications. He also requested that I take administrative notice of certain enumerated facts pertaining to the Islamic Republic of Pakistan (Pakistan), appearing in ten 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 State,³ the Director of National Intelligence,⁴ and the Chairman of the Joint Chiefs of Staff.⁵ In addition, the Government relied on source information regarding Pakistan in

² Department Counsel initially invoked ¶13.1.7, Additional Procedural Guidance, Encl. 3, of the Directive, and requested a hearing. See Item 4 (Letters, dated October 18, 2012); Item 5 (E-mail, dated October 19, 2012); Item 6a (Letter, dated November 19, 2012). The request was subsequently withdrawn. See Item 9 (E-mail, dated December 6, 2012).

³ 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, Bureau of Democracy, Human Rights, and Labor, *2011 Human Rights Report: Afghanistan*, undated; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2010*, dated August 18, 2011; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Afghanistan*, dated June 27, 2012; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2010, Chapter 5: Terrorist Safe Havens*, dated August 18, 2011; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2011, Chapter 2. Country Reports: South and Central Asia Overview (Extract)*, and *Chapter 5: Terrorist Safe Havens (Extract)*, dated July 21, 2012 (two copies); and U.S. Department of State, Bureau of International Information Programs (IIP) Article, U.S. Declares Haqqani Network a Terrorist Organization, dated September 7, 2012.

⁴ 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.

⁵ *Statement of Admiral Michael Mullen, U.S. Navy, Chairman, Joint Chiefs of Staff before the Senate Armed Services Committee on Afghanistan and Iraq*, dated September 22, 2011.

publications of The White House,⁶ the U.S. Department of State,⁷ the Director of National Intelligence,⁸ and the Chairman of the Joint Chiefs of Staff.⁹

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,¹⁰ as set forth below under the Afghanistan and Pakistan subsections.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with explanations, three of the factual allegations pertaining to foreign influence (§§ 1.c. through 1.e.). Although the two remaining factual allegations (§§ 1.a. and 1.b.) were denied, Applicant actually admitted, with explanations, portions of both allegations. 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 44-year-old employee of a defense contractor who, since February 2011, has served as a linguist.¹¹ He previously owned several food marts and

⁶ The White House, Office of the Press Secretary, *Press Briefing by Senior Administration Officials on the Killing of Osama bin Laden*, dated May 2, 2011.

⁷ U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2011, Terrorist Safe Havens, Chapter 5*, dated July 31, 2012; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports: South and Central Asia Overview*, dated July 31, 2012; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Pakistan*, dated September 19, 2012; U.S. Department of State, *Country Specific Information: Pakistan*, dated August 31, 2012; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2011 Human Rights Report: Pakistan*, dated May 24, 2012; and U.S. Department of State, Bureau of International Information Programs (IIP) Article, U.S. Declares Haqqani Network a Terrorist Organization, dated September 7, 2012 – the same document cited by Department Counsel regarding Afghanistan.

⁸ 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 – the same document cited by Department Counsel regarding Afghanistan.

⁹ Statement of Admiral Michael Mullen, U.S. Navy, Chairman, Joint Chiefs of Staff, before the Senate Armed Services Committee on Afghanistan and Iraq, dated September 22, 2011; Chairman of the Joint Chiefs of Staff National Public Radio “*All Things Considered*” Interview, dated March 27, 2009 – the same documents cited by Department Counsel regarding Afghanistan.

¹⁰ 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).

¹¹ Item 10, *supra* note 1, at 12; Item 6e (Counterintelligence-Focused Security Screening Questionnaire, dated February 24, 2011), at 1; Item 8 (Stipulation Regarding Adoption and Admission of Government Evidence, dated November 27, 2012 (by Applicant), with attached copy of Item 6e. Henceforth, all references will be made to Item 6e, rather than to the attachment of Item 8.

convenience stores. Applicant has never served in the U.S. military,¹² and he has never held a security clearance.¹³ He currently serves as a civilian linguist for the U.S. Army in support of Operation Enduring Freedom at or near a military facility in Afghanistan. He previously served as a civilian linguist and cultural consultant with a U.S. Marine Corps (USMC) intelligence-gathering unit in Afghanistan.¹⁴

Character References and Work Performance

In recognition of Applicant's exceptional performance while stationed in Afghanistan from July 2011 until July 2012, he was awarded a certificate of merit and appreciation from his employer.¹⁵ The commanding officer of the USMC unit in Afghanistan awarded Applicant a Meritorious Mast for his exceptional performance in direct support of U.S. military operations in Afghanistan.¹⁶ Applicant was recognized as one of the USMC's primary linguists who provided "timely, substantive interpretation services to all aspects of our operations. . . His willingness to work no matter what the conditions was what prompted our team to hand select him for our specific mission."¹⁷

Foreign Influence

Applicant was born in Afghanistan.¹⁸ Both of his parents (his father is a farmer and his mother, a housewife)¹⁹ were born in Afghanistan, and they currently reside primarily in Afghanistan, but spend the winter months in Pakistan.²⁰ Applicant is a 1983 high school graduate. Along with his father and two brothers, Applicant immigrated as church-sponsored refugees, first to Pakistan in 1986, and then to the United States in 1988.²¹ He became a naturalized U.S. citizen in 1994.²²

Applicant was married in June 1995,²³ and he and his wife have four children, all of whom were born in the United States.²⁴ Applicant's wife was born in Afghanistan in

¹² Item 10, *supra* note 1, at 16.

¹³ Item 10, *supra* note 1, at 35-36.

¹⁴ Response to FORM, dated December 24, 2012; Letter, dated December 16, 2012, attached to Response to FORM.

¹⁵ Certificate of Merit and Appreciation, dated July 3, 2012, attached to Item 3.

¹⁶ Meritorious Mast, dated March 26, 2012, attached to Item 3.

¹⁷ Letter, *supra* note 14.

¹⁸ Item 10, *supra* note 1, at 5.

¹⁹ Item 11 (Relatives and Associates chart, dated February 24, 2011), at 1.

²⁰ Item 11, *supra* note 19, at 1; Item 3 (Answer to the SOR, dated September 21, 2012, at 4.

²¹ Item 12 (Foreign Travel chart, dated February 24, 2011), at 1;

²² Item 10, *supra* note 1, at 7.

²³ Item 10, *supra* note 1, at 18.

1977.²⁵ She immigrated to the United States in 1995, and became a naturalized U.S. citizen in 2000.²⁶ The family resides in the United States,²⁷ where the three oldest children are students.²⁸ Applicant's father, a permanent resident alien, resided in the United States for about 20 years before returning to Afghanistan.²⁹ His two brothers, both of whom were initially permanent resident aliens, but now naturalized U.S. citizens, have resided in the United States since their arrival in 1988.³⁰ Two other brothers immigrated to the United States in 2000, and they are Afghan citizens who are permanent resident aliens.³¹ Another brother, a student, remains a citizen-resident of Afghanistan.³² Applicant also has two sisters. They are both citizen-residents of Afghanistan where they are housewives.³³ Applicant speaks with his parents by telephone one or two times per year; and his brothers in the United States once each week.³⁴ In 2009, Applicant traveled to Afghanistan and visited with his family for about a week.³⁵ He has not had any contact with his sisters or brother in Afghanistan since 2009.³⁶ There is no evidence that any member of Applicant's immediate or extended family has ever been associated with the Afghan or Pakistani military or intelligence service.³⁷

Applicant has no financial interests in Afghanistan, and does not own any investments or property there.³⁸ He does not financially support any relatives in

²⁴ Item 10, *supra* note 1, at 20-22; Item 11, *supra* note 16, at 1.

²⁵ Item 10, *supra* note 1, at 18; Item 11, *supra* note 16, at 1; Item 6 (Personal Subject Interview, dated March 3, 2011), at 1; Item 7 (Stipulation Regarding Adoption and Admission of Government Evidence, dated November 27, 2012 (by Applicant), with attached copy of Item 6c. Henceforth, all references will be made to Item 6c, rather than to the attachment of Item 7.

²⁶ Item 6c, *supra* note 25, at 1.

²⁷ Item 10, *supra* note 1, at 20-22; Item 11, *supra* note 16, at 2.

²⁸ Item 11, *supra* note 19, at 2.

²⁹ Item 6c, *supra* note 25, at 1; Item 3, *supra* note 20, at 4.

³⁰ Item 10, *supra* note 1, at 24-25; Item 6c, *supra* note 25, at 1; Item 12, *supra* note 21, at 1.

³¹ Item 10, *supra* note 1, at 23; Item 6c, *supra* note 25, at 1; Item 3, *supra* note 20, at 4.

³² Item 10, *supra* note 1, at 25; Item 3, *supra* note 20, at 4.

³³ Item 10, *supra* note 1, at 25-26; Item 6c, *supra* note 25, at 1; Item 3, *supra* note 20, at 4.

³⁴ Item 11, *supra* note 19, at 1.

³⁵ Item 12, *supra* note 21, at 2.

³⁶ Item 11, *supra* note 19, at 1.

³⁷ Item 6c, *supra* note 25, at 2.

³⁸ Item 6c, *supra* note 25, at 2.

Afghanistan.³⁹ He considers himself to be a loyal American, and intends to retire in the United States.⁴⁰

Afghanistan

Formerly under the control of the United Kingdom, Afghanistan received independence in August 1919. It has common borders with Pakistan on the east and the south, Iran on the west, and Russia on the north. 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, United States 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 United States 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

³⁹ Item 6c, *supra* note 25, at 2.

⁴⁰ Item 6c, *supra* note 25, at 2.

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

Pakistan

Pakistan is a parliamentary federal republic in South Asia. It has a coalition government. Pakistan was one of only three countries to recognize the Taliban regime of Afghanistan, after September 11, 2001. However, Pakistan reassessed its relations with the Taliban and pledged support to the United States and the international coalition in Operation Enduring Freedom, which aimed at removing the Taliban from power. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The Taliban operates openly in Pakistan, as do extremists from the Pakistani Taliban and al-Qaida. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. 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. Those safe havens have been defined as:⁴¹

ungoverned, under-governed, or ill-governed physical areas where terrorists are able to organize, plan, raise funds, communicate, recruit, train, transit, and operate in relative security because of inadequate governance capacity, political will, or both.

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. In January 2011, the Governor of Punjab was assassinated in a terrorist attack, and in March 2011, the Pakistani Federal Minister for Minority Affairs was assassinated in another terrorist attack.

⁴¹ U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2011, Terrorist Safe Havens, Chapter 5, supra* note 7, at 1

Pakistan consistently ranks among the most corrupt countries in the world by numerous international organizations. 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. Special Forces personnel raided a large compound located in a residential neighborhood in Pakistan and shot and killed Osama bin Laden, the leader of al-Qaida.

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."⁴² 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."⁴³

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations

⁴² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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."⁴⁴ 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 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.⁴⁵

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."⁴⁶

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."⁴⁷ 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,

⁴⁴ "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).

⁴⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁶ *Egan*, 484 U.S. at 531

⁴⁷ See Exec. Or. 10865 § 7.

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 under the Foreign Influence guideline 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 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.⁴⁸ Applicant's varied relationships with his parents and three siblings, all of whom are Afghan citizens who still reside in Afghanistan, or vacation part of the year in Pakistan, as well as Applicant's two brothers who are Afghan citizens residing in the United States, are current security concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), it is potentially disqualifying where there is:

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.

Similarly, under AG ¶ 7(b), security concerns may be raised when there are:

⁴⁸ 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).

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

AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his parents and five siblings 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 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.⁴⁹ 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."⁵⁰

⁴⁹ 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).

⁵⁰ ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

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, 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 parents and three siblings still reside in Afghanistan (although his parents temporarily reside in Pakistan during the winter months) 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 parents or siblings are or have ever been political activists, challenging the policies of the Afghan or Pakistani governments; that terrorists have approached or threatened Applicant or his parents or siblings for any reason; that the Afghan government, Pakistani government, al-Qaida, or the Taliban have approached Applicant; or that his parents or siblings currently engage in activities that would bring attention to themselves. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Afghan government, the Pakistani government, al-Qaida, or the Taliban, which may seek to quiet those who speak out against them.

Also, as noted above, Applicant has two brothers who, although they remain Afghan citizens, are permanent U.S. residents, and have been so since 2000. As to those two brothers, 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 has significant connections to the United States, having lived in the United States for nearly 25 years. His wife, children, and two brothers are U.S. citizens residing in the United States. Two other brothers remain Afghan citizens, but they too reside in the United States. His parents, two sisters, and one brother are Afghan citizen-residents, but the parents spend their winters in Pakistan. Moreover, Applicant wants his security clearance so that he can remain in Afghanistan to assist U.S. Armed Forces in their combat and intelligence-gathering mission there. This is not a situation where an applicant seeks a security clearance so he can simply work with classified information and enjoy the comforts of home in the United States. 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. As noted by one of his U.S. military combat colleagues, Applicant's “willingness to work no matter what the conditions was

what prompted our team to hand select him for our specific mission.” Applicant’s continuing relationship with his parents and brother is close and his contacts with them, though varied, are relatively frequent, too close and frequent to generate more than a limited application of AG ¶¶ 8(a) and 8(c). His relationship with his sisters is not as close and his contact with them is basically nonexistent. Applicant has met his burden of showing there is little likelihood that relationships with his parents, one brother, or his two sisters, could create a risk for foreign influence or exploitation. Furthermore, I am persuaded that Applicant’s loyalty to the United States is steadfast and undivided, and that he 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(b) applies.

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.⁵¹

There is some evidence against mitigating Applicant’s situation, because his parents, two sisters, and one brother are Afghan citizen-residents, and are at risk from al-Qaida and Taliban terrorists. (See AG ¶ 2(a)(8).) Furthermore, his parents spend their winter months in Pakistan.

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 parents, brother, and sisters from al-Qaida and Taliban terrorists. These circumstances increase the probability that Applicant will

⁵¹ 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).

recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him.⁵² Moreover, while the “heightened risk” of terrorist activities occurring in Afghanistan and Pakistan are of significance, it should also be remembered that terrorists and would-be terrorists are also active in the United States, creating a “heightened risk” here as well. With the vast majority of his family members residing in the United States, there is a reduced “heightened risk” of foreign exploitation, inducement, manipulation, pressure, or coercion. 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).

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
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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

⁵² See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).