



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



In the matter of:)
)
) ISCR Case No. 12-03405
)
)
Applicant for Security Clearance)

Appearances

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

03/01/2013

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a native of Afghanistan, who became a naturalized U.S. citizen in August 2008. His father, brother, and spouse have Afghan citizenship but live in the United States. Applicant’s grandmother, his aunt and uncles, his brother-in-law (sister’s husband), and his parents-in-law, are resident citizens of Afghanistan. The foreign influence concerns raised by his security significant ties to these family members are mitigated by his commitment to the United States, as evidenced by his service as a contract linguist for the Department of Defense (DOD). Clearance granted.

Statement of the Case

On September 5, 2012, the DOD issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, foreign influence, and explaining why it was unable to grant a security clearance to Applicant. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel*

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR on October 8, 2012, and he requested a decision without a hearing. On December 11, 2012, the Government submitted a File of Relevant Material (FORM) consisting of 9 exhibits (Items 1-9). On December 13, 2012, the Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on January 22, 2013. In his January 23, 2013 rebuttal to the FORM, Applicant did not object to any of the Government's exhibits. Applicant's rebuttal was accepted into the record as Applicant exhibit (AE) A without objection. On February 5, 2013, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Procedural and Evidentiary Rulings

Administrative Notice

In the FORM, the Government requested that the DOHA administrative judge take administrative notice of certain facts pertinent to the Islamic Republic of Afghanistan (Afghanistan) and its foreign relations. The request for administrative notice was based on nine publications, consisting of documents of the U.S. State Department and statements from the Director of National Intelligence and of Admiral Mullen, then Chairman of the Joint Chiefs of Staff.¹ Applicant did not file any objections to the Government's request for administrative notice or to any specific facts set forth pertaining to Afghanistan. Accordingly, I took administrative notice, subject to my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See e.g., ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007).

The State Department's Bureau of Consular Affairs issued an updated *Afghanistan: Country Specific Information* on January 28, 2013, and a new *Travel Warning: Afghanistan* on January 29, 2013. The parties were notified by email on February 20, 2013, of my intention to review those documents. The facts administratively noticed are set forth in the Findings of Fact, below.

Motion to Amend SOR

In footnote 71 of the FORM, Department Counsel indicated that notwithstanding Applicant's admission to SOR 1.f, alleging the Afghan residency and citizenship of his grandmother, two aunts, and one uncle, the evidence indicates that one of Applicant's

¹The source documents identified in the FORM were provided to the Applicant with copies to the DOHA administrative judge to be furnished on request. The documents were all available on the Internet. See www.state.gov for the State Department, www.dni.gov for DCNI Clapper's statement on the Worldwide Threat Assessment, and www.jcs.mil for Admiral Mullen's speech at the Senate Armed Services Committee Hearing on Iraq and Afghanistan.

aunts lives in Pakistan, and that he has a second uncle in Afghanistan. To conform to the evidence, Department Counsel proposed that SOR 1.f should be amended to read, "Your grandmother, 1 aunt and 2 uncles are citizens of Afghanistan, living in Afghanistan." Applicant did not respond to this proposed amendment or submit information contrary to it. SOR 1.f was amended at the Government's motion.

Findings of Fact

The amended SOR alleges under Guideline B, foreign influence, that Applicant's father (SOR 1.a) and brother (SOR 1.b) are Afghan citizens, who reside in the United States. Also under Guideline B, Applicant's fiancée (SOR 1.c), his future in-laws (SOR 1.d), his brother-in-law (sister's husband) (SOR 1.e), and other close relations (his grandmother, one aunt, and two uncles) (SOR 1.f) are resident citizens of Afghanistan. Applicant admitted the allegations but for SOR 1.c. He married his fiancée, who immigrated to the United States on a fiancée visa in January 2012, and she now resides in the United States. After considering the Government's FORM, including Applicant's Answer (Item 3) and his rebuttal to the FORM (AE A), I make the following findings of fact.

Applicant is a 27-year-old defense contractor employee, who has been working as a linguist for the U.S. military in a combat zone since February 3, 2012. (Items 4, 5; AE A.)

Applicant was born in Afghanistan in October 1985. His father served in the Afghan Army from 1979 to 1992 before working as a carpenter. Applicant's mother worked as an architectural engineer. (Items 6C, 8.) Around 1997, the Taliban took over the family's home and imprisoned Applicant's father because of his previous service in the Afghan Army. After about a month, the family received word that Applicant's father had been killed. Applicant fled with his mother and siblings to Pakistan, where they awaited refugee visas to come to the United States. Applicant worked making shoes instead of going to school to help support the family while in Pakistan. (Item 6C.) In April 2003, Applicant immigrated to the United States with his mother and siblings (two brothers, then ages 6 and 12, and two sisters, then ages 10 and 14). Applicant enrolled in high school. (Items 4, 5, 8.) In 2005, Applicant's family learned that his father was alive and would be joining them in the United States. About a month later, the family was reunited. (Items 6c, 8.)

Applicant graduated from high school at age 20 in June 2006. He began part-time study in auto mechanics at a local community college while working at a restaurant. Applicant took classes on and off for the next three years, but he did not earn a degree. For four years, from October 2007 to December 2011, Applicant was employed full time as a "value stream operator" for a private company. (Items 4, 5, 8.) In early August 2008, Applicant became a naturalized U.S. citizen. He took no steps to formally renounce his Afghan citizenship, but he no longer considered himself to be a citizen of Afghanistan. (Items 4, 5, 6C, 8.) In November 2008, Applicant obtained his

U.S. passport. In May 2009, Applicant purchased the home in which he resided with his family. (Items 4, 5.)

Around June 2009, the elder of Applicant's sisters married an Afghan citizen in Afghanistan. Applicant and his family attended the wedding. It was Applicant's first trip back to Afghanistan since he fled with his mother and siblings to Pakistan in 1997. Applicant met his future fiancée (now spouse) at the wedding. She was a college student studying to become a teacher. During his 45-day stay in Afghanistan, Applicant was hosted by his new brother-in-law and his family. He saw his grandmother during that trip. After he returned to the United States, Applicant had ongoing contact, about twice a week, with his future fiancée. (Item 6C).

In November 2010, Applicant returned to Afghanistan for three weeks. He stayed with his grandmother for a few days before spending the remainder of his time with his fiancée and her parents. His fiancée accepted his marriage proposal during that trip. (Items 5, 6C.)

Around September 2011, Applicant was offered a position by his current defense contractor employer to work as a linguist for the U.S. military. On October 6, 2011, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant disclosed that he, his mother, his sisters, and his youngest brother, were previously citizens of their native Afghanistan, before they became naturalized in the United States. His father and his other brother were still citizens of Afghanistan. However, his brother was a U.S. permanent resident. His father had a work permit and was in the process of becoming a U.S. permanent resident. Concerning other foreign contacts, Applicant indicated that he had weekly telephone contact with his fiancée, an Afghan resident citizen whom he planned to marry on her arrival to the United States. Applicant listed his trips to Afghanistan in 2009 and 2010 to visit family and friends. (Item 4.)

On November 11, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He explained that his family fled Afghanistan as refugees. He had become a naturalized U.S. citizen, and his allegiance was solely to the United States. He denied he could be influenced because of his contacts with foreign nationals. Applicant indicated that his brother who holds U.S. permanent residency worked as a camp director for a charitable organization. His father was a carpenter, but he had been laid off.² Applicant disclosed his relationship with his fiancée, a student in Afghanistan, with whom he had contact by telephone three times weekly since July 2009. She was unaware that he was being considered for a DOD security clearance. Applicant added that due to "oversight," he had not previously disclosed that he had an uncle, who lived in Afghanistan, with whom he had contact twice yearly by telephone. He related that this uncle was an office worker for a UK or Australian company. (Item 8.)

² Applicant's father was apparently laid off in 2011. (Item 6C.)

On January 2, 2012, Applicant executed an e-QIP for the clearance needed to participate in a U.S. military linguist program in Afghanistan. In response to section 20B concerning foreign business, professional activities, and foreign government contacts, Applicant disclosed that his fiancée had obtained a visa to come to the United States under his sponsorship, but she had not yet arrived. (Item 5.)

On January 19, 2012, Applicant was interviewed by an OPM investigator to obtain further details about his background and foreign contacts. Applicant disclosed his family's flight from the Taliban. He has no assets in Afghanistan, and indicated that he is ineligible for dual citizenship with the U.S. and Afghanistan. He expressed no desire to obtain foreign citizenship because he was loyal to the United States. Applicant was excited to work with "our" [the U.S.] military because he felt obligated to help the country that has offered so much to him and his family. He understood that acquisition of a foreign citizenship or passport could justify revoking his eligibility for a sensitive position or access to classified information or both. Applicant explained that his brother with U.S. permanent residency had applied for U.S. citizenship, but his application was delayed because he had sold cigarettes to a minor while working at a gas station. Applicant related ongoing contacts with this brother three or four times a week. He also indicated that his fiancée would be coming to the United States on a fiancée's (K-1) visa on January 20, 2012. She knew he was seeking a DOD security clearance to work in Afghanistan with the U.S. military, but she had expressed no undue interest. He denied that his future parents-in-law have any current obligation to Afghanistan's government or military. His future father-in-law is a contractor for a foreign-owned company while his future mother-in-law does not work outside the home. (Item 6C.)

As for his extended family members in Afghanistan, Applicant disclosed telephone contact with his grandmother no more than two or three times a year. His contacts with his aunt, a homemaker, were limited to his trips to Afghanistan. His sister's husband works for a European technology corporation in Afghanistan pending permission from U.S. immigration authorities to join his wife in the United States. Applicant's sister had reportedly "messed up" the documents for her spouse to immigrate to the United States. Applicant expressed his belief that his brother-in-law was aware of his plans to work in Afghanistan as a linguist. Applicant revealed that he has a maternal aunt, who lives and works as a physician in Pakistan. He has had little to no contact with this aunt, although his mother is in regular contact with her sister. Applicant also has an uncle in Afghanistan, whom he "thinks" works as a cultural advisor. Applicant expressed his belief that this uncle has no obligation to the Afghan government or military.³ He has had little contact with him apart from his visits to

³ Applicant did not mention during his first interview that one of his aunts lived in Pakistan or that he had an uncle in Afghanistan, who works as a cultural advisor. His January 2012 disclosure of these foreign family members is the evidence supporting the Government's amendment to the SOR. In his rebuttal to the FORM, Applicant indicated that only his stateside family members knew about his DOD contract work ("no one is to know about, my grandmother, aunt, and uncle and my in-laws are not aware and don't know about what I do for a living and I did not [have] contact with them since I contracted with [the] Department of Defense." (AE A.) Applicant mentioned only one uncle in Afghanistan. The uncle discussed in the January 2012 interview had a different name and occupation than the uncle mentioned by name in his first interview. It could be that the uncle, who he indicated in January 2011 was an office

Afghanistan in 2009 and 2010. Applicant's family members live in the same city in Afghanistan,⁴ while his in-laws live in northern Afghanistan. (Item 6C.)

Applicant's fiancée came to the United States in January 2012, and she and Applicant married shortly after her arrival.⁵ On October 8, 2012, Applicant informed DOHA that his spouse was in the process of acquiring her U.S. permanent residency. (Item 3.)⁶ Her application for a green card had not been filed as of January 23, 2013.⁷ (AE A.)

Applicant's family members in the United States are aware that he is working in Afghanistan as a contract linguist for the United States military. As of January 23, 2013, Applicant's father had filed for U.S. permanent residency. According to Applicant, his father's case had "turned to court with unknown reason." Applicant's brother had not yet applied for naturalization because he cannot afford the cost. He is a full-time student, who works only part time in retail and cannot afford the filing cost. Applicant's sister, who is married to the Afghan resident citizen, is a stateside contract Dari language instructor for the U.S. military. Applicant's other sister currently attends college in the United States. (AE A.)

Applicant had not told his extended family members living abroad, including his parents-in-law in Afghanistan, about his defense contractor employment. He reports no contact with his foreign relatives since he began working as a contract linguist for the DOD. Applicant's spouse has not returned to Afghanistan to see her parents since she moved to the United States, and she has no plans to travel to Afghanistan in the near

worker for a foreign company, is related by marriage to Applicant's aunt in Afghanistan, although the evidence is unclear.

⁴Applicant's relatives do not live in a Taliban-held area, but their city has been a target of terrorism.

⁵The fiancé(e) K-1 nonimmigrant visa is for the foreign-citizen fiancé(e) of a U.S. citizen. The K-1 visa permits the foreign-citizen fiancé(e) to travel to the United States and marry his or her U.S. citizen sponsor within 90 days of arrival. The foreign citizen will then apply for adjustment of status to a permanent resident with the Department of Homeland Security's U.S. Citizenship and Immigration Services. See www.state.gov; www.uscis.gov.

⁶In its December 2012 FORM, the Government indicated that the available facts do not show how long Applicant's spouse has lived in the United States, her precise immigration status, or whether she has ever returned to Afghanistan. When interviewed on January 19, 2012, Applicant indicated that his then fiancée was coming to the United States permanently on a fiancée visa on January 20, 2012. (Item 6C.) In response to the SOR, Applicant related that his fiancée "got to the states on January 2012." (Item 3.) It may be inferred that she arrived in the United States on Friday, January 20, 2012, or shortly thereafter. So, she has lived in the United States for the past year after entering on a K-1 visa. Consistent with that visa, she and Applicant married within 90 days of her entry. Her status appears to be that of a lawful nonimmigrant (resident alien). As of January 23, 2013, the application to adjust her status to U.S. permanent resident had not been filed. (AE A.)

⁷Applicant has not explained why the Form I-485, Application to Register Permanent Resident or to Adjust Status, has not been filed with the U.S. Citizenship and Immigration Services.

future. She is in contact with them two or three times a month. To Applicant's knowledge, she does not discuss his work with her parents. (AE A.)

Applicant is proud to be a U.S. citizen. (Item 6C.) He has been careful to practice operational security (OPSEC) since he began his defense contractor employment. (AE A.) A U.S. military brigade commander, for whom Applicant served as a lead linguist at a combat outpost in Afghanistan starting March 2, 2012, gave his highest recommendation for Applicant as of July 25, 2012. Applicant had displayed complete loyalty to coalition forces and earned the trust of his team. This lieutenant colonel found Applicant to be "fit, intelligent, and professional," as well as a "phenomenal linguist," able to convey messages from his supervisors to individuals of high rank in both the Afghan National Army and the Afghan Uniformed Police. In his opinion, Applicant provided "truthful and steadfast service to the United States of America and its government." (AE A.)

Administrative Notice

After reviewing U.S. government publications concerning Afghanistan and its relations with the United States, I take administrative notice of the following facts:⁸

Afghanistan has been an independent nation since August 19, 1919, after the British relinquished control. Following a Soviet-supported coup in 1978, a Marxist government emerged. In December 1979, Soviet forces invaded and occupied Afghanistan. Afghan freedom fighters, known as mujaheddin, opposed the communist regime. The resistance movement eventually led to an agreement known as the Geneva Accords, signed by Pakistan, Afghanistan, the United States, and the Soviet Union, which led to the withdrawal of Soviet forces in early 1989.

The mujaheddin were not a party to the negotiations for the Accords and refused to accept them. The country remained mired in a civil war. In the mid-1990s, the Taliban rose to power, largely due to the anarchy and the division of the country among warlords after the Soviet withdrawal. The Taliban sought to impose an extreme

⁸The following official U.S. Government documents were used to provide the factual summary on Afghanistan quoted in this decision: U.S. Department of State, *Background Note: Afghanistan*, November 28, 2011; U.S. Department of State Fact Sheet, *U.S. Relations with Afghanistan*, September 6, 2012; U.S. Department of State, *Country Reports on Human Rights Practices for 2011: Afghanistan*, May 24, 2012; U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Afghanistan*, February 7, 2012; U.S. Department of State, Bureau of Consular Affairs, *Afghanistan Country Specific Information*, January 28, 2013; Worldwide Threat Assessment of the U.S. Intelligence Community for the House Permanent Select Committee on Intelligence, Director of National Intelligence, February 2, 2012; U.S. Department of State, *Country Reports on Terrorism 2011, Chapter 5—Terrorist Safe Havens and Tactics and Tools for Disrupting or Eliminating Safe Havens*, July 31, 2012; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Afghanistan*, June 27, 2012; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Afghanistan*, January 29, 2013; U.S. Department of State, *Country Reports on Terrorism 2011, Chapter 2—South and Central Asia Overview*, July 31, 2012; *Statement of Joint Chiefs of Staff Before the Senate Armed Services Committee on Iraq and Afghanistan*, September 22, 2011; and U.S. Department of State, *U.S. Declares Haqqani Network a Terrorist Organization*, September 7, 2012.

interpretation of Islam on the entire country and committed massive human rights violations. The Taliban also provided sanctuary to Osama bin Laden, to al-Qa'ida generally, and to other terrorist organizations.

After the September 11, 2001, terrorist attacks, the Taliban rejected U.S. demands that Afghanistan expel Osama bin Laden and his followers. U.S. forces and a coalition partnership commenced military operations in Afghanistan in October 2001 that forced the Taliban out of power by November 2001 and the installation of an interim government. President Hamid Karzai assumed the presidency in an October 2004 democratic election. He was declared president for a second term in November 2009, after an election marred by allegations of fraud. Widespread irregularities marred September 2010 parliamentary elections, leading to President Karzai's appointment of a special tribunal to adjudicate the disputed election results.

Afghanistan has made significant progress since the Taliban were deposed, and the al-Qa'ida core was significantly degraded by the death of Osama bin Laden and other key terrorist operatives in 2011. The country still faces many daunting challenges, principally defeating terrorists and insurgents; recovering from over three decades of civil strife; and rebuilding a shattered physical, economic and political infrastructure. The government faces challenges in developing a more effective police force, effective and accessible legal system, and subnational institutions to work in partnership with traditional and local leaders to meet the needs of the population. Most provinces in Afghanistan have established basic governance structures, but they struggle to provide essential services.

Human rights abuses persisted in 2011. Armed insurgents committed widespread violence, including killings of persons affiliated with the government and indiscriminate attacks on civilians. The Taliban increasingly used children as suicide bombers. Antigovernment elements threatened, robbed, and attacked villagers, foreigners, civil servants, and medical and nongovernmental organization (NGO) workers. The Afghan National Police and other local security forces were implicated in the torture and abuse of detainees and in extrajudicial killings. Other human rights problems included pervasive corruption in the judiciary; endemic violence and societal discrimination against women and girls; violation of privacy rights; and restrictions on freedoms of speech, the press, assembly, religion, and movement.

As of January 28, 2013, NATO and International Security Assistance (ISAF) forces were working in partnership with Afghan security forces to combat violent extremists and their strategy of terrorist attacks relying largely on assassinations, suicide bombings, and improvised explosive devices (IEDs). While the goal of the U.S. mission is to transition primary security to Afghan National Security Forces by the end of 2014, the United States is committed long term to assist Afghanistan in its efforts to rebuild its institutions and realize its vision for a country that is stable, democratic, economically successful, and committed to the protection of human rights, women's rights, and religious tolerance. Afghanistan and the United States belong to several of the same international organizations, most notably the United Nations, International

Monetary Fund, and World Bank. Afghanistan is also a Partner for Cooperation with the Organization for Security and Cooperation in Europe and is working toward accession to the World Trade Organization. On May 2, 2012, the United States and Afghanistan signed a 10-year strategic partnership agreement demonstrating the United States' enduring commitment to strengthen Afghanistan's sovereignty, stability, and prosperity, and continue cooperation to defeat al-Qa'ida and its affiliates. The agreement also signaled the U.S. intent to designate Afghanistan as a major non-NATO ally.

The Afghan government has continued in its efforts to eliminate terrorist safe havens and build security, particularly in the country's south and east, where insurgents threaten stability. From their safe havens in Pakistan, insurgent groups, such as the Haqqani in North Waziristan and the Afghan Taliban shura in Quetta, stage attacks against U.S., Afghan, and Coalition forces in Afghanistan. Insurgents carried out a complex attack against multiple targets in Kabul on September 13, 2011, and again on April 15, 2012, which included the U.S. Embassy and ISAF headquarters. On September 7, 2012, the United States formally declared the Haqqani Network a Foreign Terrorist Organization.

As of January 28, 2013, the U.S. State Department continues to warn U.S. citizens against traveling to Afghanistan in light of its volatile security situation. No region in Afghanistan is considered immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other Western nationals at any time. Remnants of the former Taliban regime and the Al-Qa'ida terrorist network, as well as other groups hostile to ISAF military operations, remain active. Afghan authorities have a limited ability to maintain order and ensure the security of Afghan citizens and foreign visitors. Kabul and its suburbs are considered at high risk for militant attacks, including rocket attacks, vehicle-borne IEDs, direct-fire attacks, and suicide bombings. Travel in all areas of the country is unsafe due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of insurgent attacks, including vehicle-borne or other IEDs. There is an ongoing and significant risk of kidnapping and assassination of U.S. citizens and NGO employees throughout the country.

U.S. citizens who are also Afghan nationals do not require visas for entry into Afghanistan. For U.S. passport holders born in Afghanistan (listed as place of birth on the passport), a visa is not required for entry. The Afghan embassy issues a letter confirming the nationality of an Afghan citizen for entry into that country. Immigration authorities in Afghanistan have implemented a fingerprinting system for all foreign visitors upon entry to the country with the exception of diplomats and ISAF personnel traveling on official orders.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy*

v. Egan, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

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

Applicant's grandmother, a maternal aunt, at least one uncle, his sister's husband, and Applicant's parents-in-law are resident citizens of Afghanistan. Applicant's spouse, his father, and one of his brothers, are citizens of Afghanistan living in the United States. Three disqualifying conditions under AG ¶ 7 are potentially applicable:

- (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; and
- (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.

The salient issue under AG ¶¶ 7(a), 7(b), and 7(d) is whether there is substantial evidence of a "heightened risk" of foreign influence or exploitation because of the respective foreign tie, contact, or interest. The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. Even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "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). 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 on, the foreign government; or the country is known to

conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Applicant has close and continuing bonds of affection and obligation with immediate family members (spouse, father, and one brother) who have Afghan citizenship. As of January 2012, Applicant lived with his parents and his siblings in a home that he owns in the United States. There is no evidence that Applicant moved from the home after he married his spouse in January 2012. She may well reside in the house with his parents and siblings while he is in Afghanistan for the U.S. military, although it is unclear. Applicant's brother with a green card is a full-time college student. Applicant had contact with him three to four times a week as of January 2012. Applicant's contact with his extended family members living in Afghanistan before his deployment was infrequent, and since then, it has apparently been non-existent. Yet, he visited with his grandmother, aunt, and the uncle who works as a cultural advisor, when he traveled to Afghanistan in 2009 and 2010. Applicant stayed with his sister's spouse when he went to Afghanistan for his sister's wedding in 2009. Applicant saw his brother-in-law during his subsequent trip to Afghanistan in 2010. Concerning his parents-in-law, Applicant first met them in 2009. He stayed with them for about three weeks in 2010 when he became engaged to their daughter. Since becoming employed by the defense contractor, Applicant had not contacted them, although his spouse speaks with her parents about two to three times a month. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002). Applicant has not rebutted that presumption. Applicant has sufficiently close relations with foreign family members living in Afghanistan, either directly or indirectly (through his spouse to her parents and through his sister to her husband), to create a potential conflict of interest between his desire to assist family members in Afghanistan and his obligation to protect sensitive information. AG ¶ 7(b) applies.

Furthermore, the risk of foreign influence is heightened because of the ongoing terrorist activities in Afghanistan. The Afghan-Taliban dominated insurgency continues its violent efforts to destabilize the Afghan civilian government and its security forces. In addition to the Taliban, al-Qa'ida, other insurgent groups, and anti-Coalition organizations continue to operate in Afghanistan, or from safe havens in Pakistan, resulting in numerous attacks and deaths. The State Department has declared that the security threat to all American citizens in Afghanistan remains critical, and travel in all areas of Afghanistan remains unsafe, due to military combat operations, landmines, banditry, armed rivalry between political and tribal groups, and the possibility of terrorist attacks. Those members of Applicant's family who live in Afghanistan are at risk of terrorism on a daily basis. The evidence does not establish that any of Applicant's family members have an obligation to the Afghan government or military. Even so, one uncle reportedly works in cultural affairs, which could enhance his visibility. Applicant's father was captured and imprisoned by the Taliban in the past because of his former military service for Afghanistan. Applicant and his family in Afghanistan must also be considered

as potential targets of terrorists and the Taliban because of Applicant's duties as a linguist in support of the U.S. military. Applicant's potential access to classified information could theoretically increase the risk of undue foreign influence. International terrorist groups have been known to conduct intelligence activities as effectively as capable state intelligence services. Disqualifying conditions ¶¶ 7(a) and 7(d) also apply.

Concerning potential factors in mitigation, AG ¶ 8(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.," is difficult to satisfy, given the ongoing risk of terrorist activity in Afghanistan. Except for his parents-in-law, all of Applicant's family members in Afghanistan live in an area at high risk for terrorist violence.

Applicant had infrequent contact with his extended family members in Afghanistan, including his parents-in-law and sister's husband, before he was deployed to Afghanistan in early February 2012. As of January 2013, Applicant had not had any personal contact with his relatives for about a year, despite his presence in Afghanistan. It is unclear whether he is prevented by contract or duty requirements to avoid any contact with his and his spouse's family members in Afghanistan. Yet, it is difficult to fully satisfy AG ¶ 8(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," chiefly because of his spouse's ties to Afghanistan and her ongoing, regular contacts with her parents. There is also some indication that Applicant's brother-in-law in Afghanistan may be aware of Applicant's employment as a linguist in Afghanistan. Applicant expressed his belief in January 2012 that his brother-in-law knew that he would be coming to Afghanistan, although he had shown no undue interest.

A heightened risk of undue foreign influence may be mitigated under AG ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant credibly denies any loyalty to his native Afghanistan, from which he fled in early 2003 for Pakistan and then the United States. The family members to whom Applicant is most closely bound by affection or obligation or both all reside in the United States. At the same time, it cannot reasonably be said that his sense of loyalty to foreign family members is so minimal to qualify for mitigation under the first prong of AG ¶ 8(b). His spouse, father, and one brother may be faced with completing claims because of their Afghan citizenship. Also, Applicant is bound to his parents-in-law in Afghanistan through his spouse, who is maintaining close relations to her parents through regular telephone calls.

Applicant has persuaded me that he can be expected to resolve any conflict of interest in favor of the United States, however. He left Afghanistan as a youth in 1997.

He came to the United States as a refugee with his mother and siblings when he was 17 in April 2003. Applicant finished high school at age 20. He took classes at a community college part time over the next three years while working as a host in a restaurant. In August 2008, he obtained his U.S. citizenship, and in November 2008, he acquired his U.S. passport. From May 2009 through December 2011, he worked as a “value stream operator.” In May 2009, he purchased the home in which his family still resides in the United States. Little is known about that purchase, including whether he is a co-owner, whether he has a mortgage, and if so, who is paying it. Yet, it shows his commitment to remain in the United States. He has no financial assets in Afghanistan. So too, his sponsorship of his fiancée to come to the United States is consistent with his U.S. citizenship. It is unclear why her application to adjust her status to U.S. permanent resident has not been filed.

Applicant’s service as a linguist in support of the United States military weighs considerably in his favor in assessing whether he can be expected to resolve any conflict of interest in favor of the United States. A lieutenant colonel in command of a military brigade, for whom Applicant served as the lead linguist from March 2, 2012 to at least July 25, 2012, gives Applicant his highest recommendation. Applicant proved to be a “phenomenal” linguist in conveying messages from his supervisors to high-ranking personnel in the Afghan National Army and Afghan Uniformed Police. In the opinion of the commander, Applicant displayed “complete loyalty to all Coalition forces and earned the trust of all those around him.” It must be noted that Applicant’s service to the United States has come at some personal cost. Aside from the risk to his own life by choosing to serve in a hostile environment, Applicant and his spouse were together as a couple for only a few weeks before he left for Afghanistan. Applicant’s connections to the United States are more significant than his connections to the extended family members living in Afghanistan, and when taken together with his linguist service in support of the U.S. military, are sufficient to overcome the foreign influence security concerns under Guideline B; 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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).⁹ Applicant has family ties to Afghanistan that heighten the risk of foreign influence. Afghanistan has been mired in conflict for decades, and the country is under

⁹ The factors under AG ¶ 2(a) are as follows:

- (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.

constant threat of violence from terrorist and extremist groups wanting to sabotage the country's efforts to establish a stable, functioning democracy. With the help of the United States and ISAF, the country has made sufficient strides for the United States to turn over primary security to the Afghans in late 2014. Nonetheless, the risk of undue foreign influence is very real.

Department Counsel correctly notes in the FORM that Guideline B cases are not about Applicant's loyalty. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." Given the circumstances under which Applicant fled Afghanistan with his family (his father's imprisonment by the Taliban), Applicant's decision to serve as a linguist is especially noteworthy. He reports being very careful to maintain OPSEC requirements, and to that end, he has not contacted his extended family members in Afghanistan since he began his duties as a linguist. The Government presented no evidence to undermine that assertion. In rebuttal to the FORM, Applicant submitted a recommendation from his brigade commander, who attests to Applicant's "loyal and steadfast" service to the brigade and the United States." The commander expressed his utmost confidence in Applicant and his ability to protect our national security.

Although still a relatively young 27, Applicant has had life experiences that have led to the maturity and professionalism displayed in fulfilling his duties as a translator. As a young refugee in Pakistan, he worked to help his mother support the family. From May 2003 until June 2006, he attended high school in the United States when he was likely older than most of his classmates and English was not his first language. He began working at a local restaurant in June 2004, when he was still in high school. Applicant has expressed verbally, and through his actions as a linguist, his appreciation for his opportunities in the United States. Applicant is likely to resist and report any attempts by a foreign power, terrorist group, or insurgent group to exploit him or his family members. After considering all the facts and circumstances, including that his closest family members are in the United States, I find it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended 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
Subparagraph 1.f: 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.

Elizabeth M. Matchinski
Administrative Judge