



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03910

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel

For Applicant: *Pro se*

11/29/2016

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 March 7, 2012, 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) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him on December 30, 2015, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD 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

¹ Item 3 (SF 86, dated March 7, 2014).

reasons 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.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated January 28, 2016, 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 March 14, 2016, 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. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on March 21, 2016. A response was due by April 20, 2016. As of this date, Applicant had not submitted any response to the FORM. The case was assigned to me on November 4, 2016.

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 extracts of six 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 extracts of five 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 specific, selected source information regarding Afghanistan in publications of the U.S. Department of State,³ the U.S. Department of Defense,⁴ the U.S. Army,⁵ and the Congressional Research Service.⁶ In addition, the Government relied on specific, selected source information regarding Pakistan in publications of the White House⁷ and the U.S. Department of State.⁸

² Item 2 (Applicant's Answer to the SOR, dated January 28, 2016).

³ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2014, Executive Summary*, undated; U.S. Department of State, Bureau of Consular Affairs, *Afghanistan Travel Warning*, dated November 19, 2015.

⁴ U.S. Department of Defense, Report to Congress: *Report on Enhancing Security and Stability in Afghanistan* (extracts), dated June 2015; U.S. Department of Defense, Press Release, *Obama Adjusts Troop Levels for Continuing Afghanistan Mission*, dated October 15, 2015.

⁵ U.S. Army, Press Release, *Army General Killed in Afghanistan*, dated August 6, 2014.

⁶ Congressional Research Service, *CRS Report for Congress: Afghanistan: Post-Taliban Governance, Security, and U.S. Policy* (extracts), dated October 15, 2015.

⁷ 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.

⁸ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2014* (extracts), undated; U.S. Department of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2014, Chapter 2 Overview: Country Reports: South and Central Asia*, (extract referring only to Afghanistan) undated; U.S. Department of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2014*,

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,⁹ as set forth below under the Afghanistan and Pakistan subsections.

Findings of Fact

In his Answer to the SOR, Applicant admitted both of the factual allegations pertaining to foreign influence (§§ 1.a. and 1.b.). 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 35-year-old employee of a defense contractor who, since December 2009, has served as a media analyst.¹⁰ He previously served as a senior assistant program officer and in various retail sales positions. Applicant received a bachelor of arts degree in government and international relations in 2006 and a master of arts degree in public policy in 2011.¹¹ He has never served in the U.S. military.¹² He has never held a security clearance, although another U.S. Government agency conducted a security clearance investigation of him from 2010 to at least April 2012, without a final determination ever being made.¹³

Chapter 5: Terrorist Safe Havens (Update to 7120 Report) (extracts), undated; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Pakistan*, (extract) dated August 28, 2015.

⁹ 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). In this instance, although Department Counsel has selected only certain pages of facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

¹⁰ Item 3, *supra* note 1, at 13-14; Item 4 (Personal Subject Interview, dated April 16, 2012), at 1-2.

¹¹ Item 3, *supra* note 1, at 11-12.

¹² Item 3, *supra* note 1, at 19.

¹³ Item 3, *supra* note 1, at 41; Item 4, *supra* note 10, at 6.

Foreign Influence¹⁴

Applicant was born and raised in Afghanistan.¹⁵ He entered the United States in 1997, and became a naturalized U.S. citizen through his father.¹⁶ Both of his parents (his father is an international organization director, and his mother, a housewife) were born in Afghanistan.¹⁷ Although Applicant's father is a former employee of a previous Afghan government, neither parent was ever associated with the Afghan military or intelligence service.¹⁸ His father is a naturalized U.S. citizen, and he retained dual citizenship with Afghanistan.¹⁹ His mother is a legal permanent United States resident in possession of a "Green Card."²⁰ Although his parents have resided in the United States, Applicant's father accepted a senior position with an independent, nonpartisan, federally funded organization created by Congress, and he has been working out of an office in Afghanistan.²¹ Applicant has five siblings, all of whom were born in Pakistan. They are all naturalized citizens of the United States, residing in the United States.²² None of Applicant's siblings was ever associated with the Afghan military or intelligence service.²³

Applicant married his Afghan-born wife in 2007. She is a legal permanent United States resident in possession of a "Green Card."²⁴ They have two children, one born in Afghanistan in 2009, and the other born in the United States in 2011. They are both U.S. citizens. Applicant, his wife, and children, reside in the United States.²⁵ Applicant's widowed mother-in-law, an Afghan citizen, was born in Afghanistan, and she now resides in Pakistan. She was never associated with the Afghan military or intelligence service.²⁶

¹⁴ General source information pertaining to the foreign influence issues discussed below can be found in the following exhibits: Item 3, *supra* note 1; Item 4, *supra* note 10.

¹⁵ Item 3, *supra* note 1, at 5-6.

¹⁶ Item 3, *supra* note 1, at 6-7.

¹⁷ Item 3, *supra* note 1, at 22-25.

¹⁸ Item 3, *supra* note 1, at 22-25.

¹⁹ Item 3, *supra* note 1, at 24.

²⁰ Item 3, *supra* note 1, at 23.

²¹ Item 4, *supra* note 10, at 3; Item 8 (Publication – name and date redacted for privacy reasons). Two U.S. Senators, a U.S. Army flag officer, and a director of the independent, nonpartisan, federally funded organization created by Congress, have high praise for Applicant's father's activities and actions on behalf of the U.S. Government efforts in Afghanistan. See character references and letters of appreciation, various dates, attached to Item 2, *supra* note 2.

²² Item 3, *supra* note 1, at 26-32.

²³ Item 3, *supra* note 1, at 26-32.

²⁴ Item 3, *supra* note 1, at 21; Item 4, *supra* note 10, at 3.

²⁵ Item 3, *supra* note 1, at 9, 26, 34; Item 4, *supra* note 10, at 3.

²⁶ Item 3, *supra* note 1, at 33-34.

The frequency of contacts between Applicant and his father and Applicant and his mother-in-law differs. In 2012, he reported that he generally communicated with his father by telephone, e-mail, and in person on a weekly basis. He generally had contact by phone with his mother-in-law once every three months or longer.²⁷ None of Applicant's family members are aware that he is currently applying for a security clearance.²⁸ Applicant has no financial interests in Afghanistan, and does not own any investments or property there. He does not financially support his mother-in-law in Pakistan.

Afghanistan²⁹

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, the United States demanded that Afghanistan expel Osama Bin-Laden and his followers. Those demands 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 continued to assert power and intimidation within the country. Terrorists continue to target United States and Afghan interests through suicide bombings, assassinations, and hostage taking.

A major concern, particularly during 2012, was "insider attacks" (attacks on the North Atlantic Treaty Organization (NATO)-led security mission in Afghanistan, and the International Security Assistance Force (ISAF), by Afghan security personnel (also known as "green on blue" attacks). These attacks, some of which apparently were carried out by Taliban infiltrators into the Afghan forces, declined by late 2012 but continued occasionally in 2013. One such attack resulted in the death of a U.S. Army Major General in 2014. In 2013, insurgents conducted a significant number of large vehicle-borne

²⁷ Item 4, *supra* note 10, at 3-4.

²⁸ Item 4, *supra* note 10, at 4.

²⁹ While not included in the Government's Motion for Administrative Notice pertaining to Afghanistan, the following two documents offering news or commentary regarding Afghanistan were submitted by Department Counsel as part of the FORM: Item 7 (News Clipping, *Afghan Defense Minister Nominee Rejection Signals Problems*, dated July 7, 2015); Item 8, *supra* note 21.

improvised explosive device attacks, targeting Coalition Forces bases, military convoys, and Afghan government buildings, mostly in southern and eastern Afghanistan. Insurgents across Afghanistan used a variety of tactics to target Afghan security personnel and Coalition Forces in well-coordinated, complex attacks in major cities and rural areas, seeking to expand their territorial influence and further disrupt civil governance.

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's regional partners, and steadily increasing the security responsibilities of the Afghan security forces. The under-governed border between Afghanistan and Pakistan remains an extremist safe haven providing sanctuary for many of the insurgent groups, which remains a security challenge for both Afghanistan and Pakistan, and poses a threat to regional security. There is increased terrorist support coming into Afghanistan from Pakistan and Iran. Not only has the security situation remained volatile and unpredictable throughout Afghanistan, but there are also tensions with Afghanistan over limiting U.S. military operations.

Afghanistan is a war zone. In early 2015, an Afghan Unity Government was formed as part of a U.S. – brokered deal following disputed elections. Rather than unifying, the participants remain divided and embroiled in political turmoil. In October 2015, 5,500 additional U.S. forces were deployed to Afghanistan. A U.S. State Department Travel Warning for Afghanistan remains in effect, and U.S. citizens are warned against travel to Afghanistan. The security situation in Afghanistan is extremely unstable and the security threat to all U.S. citizens in Afghanistan remains critical.

Pakistan

Pakistan is a parliamentary federal republic in South Asia. It is a low-income country, with a population that is 97 percent Muslim. After September 11, 2001, 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. Various terrorist organizations, including extremists from the Haqqani Network, Tehrik-e Taliban Pakistani (TTP), Lashkar I Jhangvi, Lashkar e- Tayyiba, and al-Qaida, operate openly in Pakistan. They are referred to as safe havens

which are essentially ungoverned, under-governed, or ill-governed areas of Pakistan. Together with the Afghan Taliban and other extremist 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. 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. Although they did act against TTP, Pakistani authorities did not take significant action against the other groups. Things changed in 2013 when one party won a majority of seats in the parliamentary elections. Structural reforms on counterterrorism were enacted, empowering the national government to address terrorism with enhanced law enforcement and prosecutorial powers.

Various extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks have targeted high profile government, military, and western-related sites. 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. Over 1,500 civilians and security forces personnel were killed in 2013 due to such attacks. Similar incidents occurred in 2014. The U.S. Department of State continues to warn U.S. citizens to defer all non-essential travel to Pakistan, as the presence of several foreign and indigenous terrorist groups poses a potential threat to U.S. citizens throughout Pakistan.

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. 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, human trafficking, "honor" crimes, sectarian violence, societal discrimination against national, ethnic, racial minorities, sexual identity, and caste status, as well as enforced disappearances, occur. Arbitrary arrests, governmental and police corruption is widespread. 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 the 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. Since 2009, the United States has allocated more than \$8.5 billion for Pakistani civilian and security assistance. The United States continues to build a long-term partnership with Pakistan, based on a belief that a stable, secure, prosperous, and democratic Pakistan is in the long-term U.S. national security interest.

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.

While most of the official U.S. commentary regarding Pakistan focuses on human rights violations and terrorist activities, there is little, if any, evidence that Pakistan is an active participant in economic espionage, industrial espionage or trade secret theft, or violator of export-control regulations.

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.”³⁰ 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.”³¹

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.”³² 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

³⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³² “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).

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.³³

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."³⁴

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."³⁵ 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 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

³³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁴ *Egan*, 484 U.S. at 531

³⁵ See Exec. Or. 10865 § 7.

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 SOR focused solely on Applicant's father, because of his dual citizenship, previous relationship with the Afghan government, and his current residency; and on Applicant's mother-in-law, because of her Afghan citizenship and Pakistan residence. The Government's argument in the FORM is as follows:

The fact that Applicant's father is a citizen and resident of Afghanistan and his mother-in-law is an Afghan citizen residing in Pakistan, combined with the serious risks associated with those two countries, . . . demonstrates a heightened risk of concern or exploitation that precludes a finding that Applicant has the freedom from foreign influence needed to be cleared for access to classified information. Heightened risk is established through the detailed information in the Administrative Notice summaries and attached supporting documents. Facts of particular note in those documents are: 1) the presence of Islamist radical groups, 2) the increased levels of terrorism, violence, and insurgency, and 3) significant human rights problems. . . All of these facts concerning country conditions in Afghanistan and Pakistan demonstrating a heightened risk of exploitation, coercion or duress are present due to Applicant's (and his wife's) close ties to family members who reside in those countries. Moreover, Applicant's father appears to hold a position that may be in some way affiliated with the U.S. or Afghan Government, thus making him an even more likely target of those elements in Afghanistan looking to harm U.S. and the current Afghan governments' interests. . . .

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.³⁶ Applicant has different relationships with his father and mother-in-law. His father, a U.S. citizen, is an employee of an independent, nonpartisan, federally funded organization created by Congress, and he has been working out of an office in Afghanistan. His mother-in-law, an Afghan citizen, is a widow who now resides in Pakistan, nowhere near the FATA or troubled border with Afghanistan. They are the sole members of Applicant's "family" for whom there are security concerns. There are no security concerns expressed by the DOD CAF pertaining to Applicant's mother, five siblings, wife, or children.

The guideline notes two particular 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

³⁶ 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).

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.

AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of those identified conditions requires further examination of Applicant's respective relationships with his father who "resides" in Afghanistan, and his mother-in-law residing in Pakistan to determine the degree of "heightened risk."

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." Also, AG ¶ 8(d) may apply where "the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority."

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.³⁷ In fact, the Appeal Board has cautioned against "reliance

³⁷ 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).

on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”³⁸

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 father, a naturalized U.S. citizen, temporarily resides in Afghanistan while he performs his duties with his organization, under the auspices of the U.S. Government. Contrary to the assertion of Department Counsel that Applicant’s father “appears to hold a position that may be in some way affiliated with the . . . Afghan Government,” the evidence reveals no such affiliation. Department Counsel also argued that the presence of Islamist radical groups; the increased levels of terrorism, violence, and insurgency; and human rights problems in Afghanistan demonstrate that a heightened risk of exploitation, coercion or duress are present due to Applicant’s close ties to his father. Based on their relationship, and the location of Applicant’s father, there is obviously a potential, if not substantial, risk – a “heightened risk” – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. That risk is not generated by the Afghan government, but rather by Islamic terrorists striking out against the central Afghan authorities and all foreigners. Applicant’s father is not unlike members of the U.S. military stationed in Afghanistan, for they, too, are potential targets in this war on civilized humanity. The “presence of Islamist radical groups and increased levels of terrorism, violence, and insurgency” in Afghanistan have also been described for events occurring on September 11, 2001, and more recently in Fort Hood, Boston, Paris, Nice, Orlando, San Bernardino, and New York City. There are U.S. military forces stationed in Afghanistan, and Applicant’s father’s continued presence there would be of significant assistance to assisting those U.S. forces in fulfilling their mission.

As far as Applicant’s widowed mother-in-law is concerned, there is no evidence that she is or has ever been a political activist, challenging the policies of the Afghan or Pakistani governments; that terrorists have approached or threatened her for any reason; that the Afghan government, Pakistani government, al-Qaida, or the Taliban have

³⁸ ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

approached her; or that she currently engages in activities that would bring attention to herself. As such, there is a reduced possibility that she would be a target 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. Under these circumstances, the potential heightened risk created by her residence in Pakistan is greatly diminished.

Applicant has substantial connections to the United States, having lived in the United States for nearly two decades. His wife, two children, five siblings, and extended family members are either U.S. citizens or permanent legal residents in the United States. His father is a U.S. citizen performing services in Afghanistan. Applicant's continuing relationship with his father in Afghanistan is close and his contacts with him are relatively frequent. However, under the developed evidence, it is unlikely Applicant 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. His relationship with his mother-in-law in Pakistan, while not as close, is not of such significance. Applicant has met his burden of showing there is little likelihood that relationships with his father and mother-in-law 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(a), 8(b), 8(c), and 8(d) apply.

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.³⁹

³⁹ 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).

There is some evidence against mitigating Applicant's situation, because his father is working in Afghanistan and his mother-in-law is an Afghan citizen residing in Pakistan, and they are at risk from al-Qaida and Taliban terrorists. (See AG ¶ 2(a)(8).)

The mitigating evidence under the whole-person concept is more substantial. Both Applicant and his father have significant experience regarding Afghanistan – experience that is extremely helpful or potentially supportive of the U.S. goals in Afghanistan. Applicant has shown his patriotism, loyalty, and fidelity to the United States. 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.⁴⁰ Moreover, while the “heightened risk” of terrorist activities occurring in Afghanistan and, to a lesser extent, in 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

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

⁴⁰ See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).