



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



In the matter of:)
)
) ISCR Case No. 16-01645
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

12/28/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated foreign influence security concerns relating to his connections to Afghanistan; however, personal conduct security concerns relating to falsification of his security clearance applications are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On May 4, 2014, and on September 26, 2016, Applicant completed and signed Questionnaires for National Security Positions (SF 86) or security clearance applications (SCA). Government Exhibit (GE) 1, 2. On February 27, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under the foreign influence and personal conduct guidelines.

On March 15, 2017, Applicant responded to the SOR and requested a hearing. HE 3. On June 12, 2017, Department Counsel was ready to proceed. On June 22, 2017, the case was assigned to me. On August 17, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for August 28, 2017. HE 1. Applicant's hearing was held as scheduled using video teleconference. Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. Transcript (Tr.) 13.

During the hearing, Department Counsel offered seven exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 17-20; GE 1-7. On August 29, 2017, the following day, Applicant provided six exhibits, which were admitted into evidence without objection. Applicant Exhibit (AE) A-F. On September 4, 2017, the record closed. Tr. 64-65. On September 6, 2017, DOHA received a copy of the transcript of the hearing.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Procedural Ruling

Department Counsel offered a summary for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Afghanistan with five attachments. Tr. 17-18; HE 4; I-V. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant did not object to me taking administrative notice of the proffered documents and obtaining information from the Department of State website. Tr. 18-19. Department Counsel's request for administrative notice is granted. Tr. 18-19.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

The first three paragraphs and the last paragraph of the Afghanistan section are taken from U.S. State Department Background Notes, <https://2001-2009.state.gov/p/sca/ci/af/>. The other paragraphs are quoted from Department Counsel's administrative notice request (bullet symbols and internal footnotes are omitted).

Findings of Fact²

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 2.a, and 2.b. HE 3. He also provided mitigating information. HE 3. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 44-year-old linguist, and a DOD contractor has employed him for about four years out of the past six years in Afghanistan. Tr. 6, 9-10. In 1973, he was born in Afghanistan. Tr. 6; GE 1. In 1989, he graduated from high school. Tr. 7. In 1992, he earned a bachelor's degree in Afghanistan from a military school. Tr. 8; GE 3 at 13. He served in the Afghan Air Force from 1992 to 1994. Tr. 25; GE 1. He was a lieutenant and flew helicopters. GE 3 at 7. He has attended college in the United States to improve his English skills and other basic knowledge. Tr. 7, 36.

In 1999, Applicant entered the United States, and in 2014, he became a U.S. citizen. Tr. 17, 27; GE 1. In November 2014, he married in Afghanistan,³ and he has a one-year-old son, who was born in the United States. Tr. 8, 43, 52. His Afghan in-laws attended the wedding. Tr. 44.

Applicant's father was employed in Afghanistan as a police officer for 30 years. Tr. 22. He retired from that employment in the late 1980s. Tr. 22. After he retired as a police officer, he was employed in public transportation for about six years. Tr. 22-23. In 1994, Applicant's father moved his family, including Applicant and his six siblings, to Pakistan because of the civil war in Afghanistan. Tr. 24-26.

In 1999, Applicant flew into the United States, and he was arrested because he did not have a visa. Tr. 28. The Immigration and Naturalization Service detained him for three months, and then granted him political asylum. Tr. 28. He received a work permit and a social security number. Tr. 28. From 1999 to 2011, Applicant worked for several different companies in the United States. Tr. 29-31.

Applicant owns two homes in the United States. Tr. 31. He rents one home, and he lives in the other home with his parents, one of his brothers, his spouse, and his son. Tr. 32. In 2008, his parents immigrated to the United States. Tr. 32. His father and his younger brother are U.S. citizens, and his mother is a U.S. permanent resident. Tr. 33-

² The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

³ Applicant's September 26, 2016 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA) in Section 17 states that Applicant married in November 2014, in the United States.

34. Applicant's sister lives in the United States, and she is married to a U.S. citizen. Tr. 33. Applicant has two brothers who are citizens and residents of the United States. Tr. 35. Two of his brothers live in Germany; one of them is in refugee status; and the other is a citizen of the Netherlands. Tr. 35. All of his siblings live in either the United States or Germany. Tr. 36. In 1985, Applicant's spouse was born in Afghanistan. GE 1. His spouse is a permanent resident of the United States. Tr. 37. Applicant sponsored his spouse's U.S. permanent residence. Tr. 38.

Applicant does not own property in Afghanistan. Tr. 38. His parents own property in Afghanistan. Tr. 38. He does not know whether he will inherit property in Afghanistan. Tr. 39. Applicant intends to raise his family in the United States and to retire in the United States. Tr. 52-53.

SOR ¶ 1.a alleges Applicant's mother-in-law, father-in-law, and brother-in-law are citizens and residents of Afghanistan. Applicant has contact with his in-laws about every two to eight weeks. Tr. 43-44. His spouse communicates with her parents about once a week. Tr. 45. Applicant has not met with his in-laws since his wedding in 2014. Tr. 43-44. His most recent visit to Afghanistan for personal reasons was for his wedding in 2014. Tr. 44. None of his in-laws are employed by or dependent on the Afghan Government. Tr. 49-51.

SOR ¶ 1.b alleges Applicant has extended family in Afghanistan, and he has provided about \$32,000 to his family living in Afghanistan since 1999. Applicant has a cousin living in Afghanistan, and Applicant communicates with him about once a month. Tr. 46. From 1999 to 2008, he provided \$200 to \$300 monthly to his parents when they were living in Afghanistan. Tr. 47, 58. He also provided some funds to his spouse before she left Afghanistan. He has not provided funds to anyone in Afghanistan since 2014. Tr. 47. He does not send funds to his in-laws in Afghanistan because they are financially secure. Tr. 48.

Applicant served with the U.S. armed forces in Afghanistan from 2011 to 2013, for seven months in 2015, and 2016 to present. Tr. 39-40. Applicant's annual linguist salary in 2013 was \$185,000, and his annual salary now is \$77,000. Tr. 40-41. He will receive a small pay raise if his security clearance is granted. Tr. 42. He served in Afghanistan under dangerous combat conditions. Tr. 41-43.

Personal Conduct

Applicant's May 4, 2014, and September 26, 2016 SCAs asked in Section 20A, Foreign Activities, "Have you **EVER** provided financial support for any foreign national?" Both times Applicant answered, no, and did not disclose his financial support to his parents who were citizens and residents of Afghanistan. SOR ¶¶ 2.a and 2.b. Applicant said he "was not paying attention to that question." Tr. 56. Although Applicant accepted responsibility for answering the questions incorrectly, he stated that the recruiter employed by the government contractor helping him answer the questions did not pay attention to the question. Tr. 56.

In his February 17, 2010 counter-intelligence interview, Applicant was asked, "What significant assistance, gifts, cash, or other items of value have you provided to non-U.S. persons . . . ," and he responded, "none."⁴ GE 6 at 10. In his May 9, 2011 counter-intelligence interview, he disclosed that from 1999 to 2010, he provided about \$150 to \$300 to his family living in Afghanistan. GE 5 at 8.

In his May 6, 2014, and October 12, 2016 counter-intelligence interviews, he disclosed that he provided \$600 to his cousin living in Afghanistan. GE 3 at 11; GE 4 at 10. He also indicated from 1999 to 2010, he provided about \$32,000 to his family living in Afghanistan. GE 3 at 11; GE 4 at 10. He explained the absence of the financial support information from his SCA was because "HE was not aware HE had to disclose this information in HIS SF 86." GE 3 at 11; GE 4 at 10.

Applicant's 2014 SCA is lengthy (56 pages) and detailed. GE 1. For example, he listed: 16 countries that appeared on his passport; 7 residences; and 10 employments. GE 2. Applicant's 2016 SCA is also lengthy (64 pages) and detailed. GE 1. For example, in the employment section, he listed 12 employments, including some that were brief. GE 1. In the foreign travel section, he listed each of the transit stops to and from Afghanistan. GE 1.

In his SOR response, Applicant said he sent an unspecified amount of money to his parents and a total of \$600 to \$800 in \$200 payments to his cousin from 2006 to 2014. HE 3. He said his falsifications of his 2014 and 2016 SCAs were not intentional. He emphasized that he revealed his financial contributions to family living in Afghanistan in his 2011, 2014, and 2016 counter-intelligence interviews. HE 3.

Character Evidence

Applicant served in the dangerous environment of Afghanistan for about four years. Tr. 62-63. Applicant received four certificates of appreciation for his service in Afghanistan from Army units lauding his selfless service, professionalism, devotion to duty, and contributions to mission accomplishment. AE A-AE D. In 2012, a Marine Corps company commander praised him for his professionalism, cultural awareness, dedication to duty, and contributions during "over 75 mounted and dismounted patrols,"

⁴ Applicant's SOR does not include the allegation that Applicant failed to disclose his payments to support his parents living in Afghanistan from 1999 to 2008 in his 2010 counter-intelligence interview. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). This allegation will not be considered except for the five purposes listed above.

which helped to foster a positive rapport between the Afghan people and Coalition Forces.” AE E. In 2013, a military police detachment commander thanked Applicant for his proficiency, professionalism, reliability, rapport with soldiers, dependability, punctuality, and trustworthiness. AE F.

Afghanistan

Afghanistan is a country in Southwestern Asia that is approximately the size of Texas (249,935 square miles). Pakistan borders it on the east and the south. Iran borders it on the west and Russia to the north. It is a rugged and mountainous country which has been fought over by powerful nations for centuries. In 2009, the population was about 28 million people with about 3,000,000 Afghans living outside Afghanistan.

Afghanistan is presently an Islamic Republic with a democratically-elected president. Afghanistan has had a turbulent political history, including an invasion by the Soviet Union in 1979. After an accord was reached in 1989, and the Soviet Union withdrew from Afghanistan, fighting continued among the various ethnic, clan, and religious militias. By the end of 1998, the Taliban rose to power and controlled 90% of the country, imposing aggressive and repressive policies.

In October 2001, U.S. forces and coalition partners led military operations in the country, forcing the Taliban out of power by November 2001. The new democratic government took power in 2004 after a popular election.

A U.S. State Department Travel Warning remains in effect for Afghanistan. The State Department warns U.S. citizens against travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. Travel to all areas of Afghanistan remains unsafe due to the ongoing risk of kidnapping, hostage-taking, military combat operations, landmines, banditry, armed rivalry between political and tribal groups, militant attacks, direct and indirect fire, suicide bombings and insurgent attacks, including attacks using vehicle-borne or other improvised explosive devices. Attacks may also target official Afghan and U.S. governmental convoys and compounds, foreign embassies, military installations, and other public areas

Extremists associated with various Taliban networks, the Islamic State in Iraq and Syria (“ISIS”), and members of other armed opposition groups are active throughout the country. ISIS has demonstrated its operational capability, having attacked both Afghan and foreign government facilities. These terrorist groups routinely attack Afghan, Coalition Forces, and U.S. targets with little regard for or the express intent to cause civilian casualties.

Due to security concerns, unofficial travel to Afghanistan by U.S. Government employees and their family members is restricted and requires prior approval from the State Department.

According to the State Department’s 2015 Country Reports on Terrorism, Afghanistan continued to experience aggressive and coordinated attacks by the Afghan

Taliban, including the Haqqani Network and other insurgent and terrorist groups. 14 The Haqqani Network continued to plan and conduct high profile attacks and assassinations against U.S., Coalition Forces and Afghan interests, particularly in Kabul and other key government centers.

According to the State Department, the border region of Afghanistan and Pakistan remains a safe haven for terrorists. It is an under-governed area that terrorists exploit to conduct attacks in both countries. Terrorist groups active in Afghanistan, such as al-Qa'ida (AQ), the Haqqani Network and others, operate in Afghanistan and Pakistan. ISIL-Khorasan (ISIL-K) is largely based in Afghanistan, but its support network also reaches into Pakistan's tribal areas along the border. The Afghan government has struggled to assert control over this remote terrain where the population is largely detached from national institutions.

In December 2016, the Department of Defense reported to Congress that, although al-Qa'ida's core leadership in the Afghanistan-Pakistan border region has been degraded, elements continue to seek safe haven on both sides of the border to regenerate and conduct attack planning. The continued development of an al-Qa'ida affiliate in the region (al-Qa'ida in the Indian Subcontinent (AQIS)), highlights the dynamic nature of the terrorist and militant landscape of the region, posing risks to the mission and to U.S. interests.

In its annual Human Rights Report for 2016, the U.S. Department of State reported that the most significant human rights problems in Afghanistan during the year were widespread violence, including indiscriminate attacks on civilians by armed insurgent groups; armed insurgent groups' killings of persons affiliated with the government; torture and abuse of detainees by government forces; widespread disregard for the rule of law and little accountability for those who committed human rights abuses; and targeted violence and endemic societal discrimination against women and girls.

The United States' extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to its citizens and residents and Afghan Government problems developing and complying with the rule of law. A top national security goal of the United States is to establish relationships, cooperation, training, and support of the Afghanistan Government and military in the ongoing war against terrorism.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant

applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 has three conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact, regardless of method, 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 classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology; and
- (e) shared 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.

Applicant and his spouse have frequent contacts⁵ with his in-laws, who are citizens and residents of Afghanistan. Their frequent contacts are a manifestation of their care and concern for relatives living in Afghanistan. Between 1999 and 2008 or 2010, Applicant provided about \$32,000 to support his parents living in Afghanistan. He also provided about \$600 to his cousin living in Afghanistan.

⁵ The Appeal Board has concluded that contact every two months or more frequently constitutes “frequent contact” under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant’s siblings once every four or five months not casual and infrequent).

There are widely documented safety issues for residents of Afghanistan because of terrorists and insurgents. Applicant has voluntarily shared in those dangers on behalf of the DOD for about four years, and he is willing to do so in the future. Numerous Afghan linguists, supporting U.S. forces, have family living in Afghanistan. Thousands of United States and coalition armed forces and civilian contractors serving in Afghanistan are targets of terrorists or the Taliban, along with Afghan civilians who support the Afghan Government and cooperate with coalition forces.

The mere possession of close family ties with one or more family members living in Afghanistan is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant lives with and is close to his spouse. His spouse has relatives living in Afghanistan. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). “[A]s a matter of common sense and human experience, there is [also] 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. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e). Indirect influence from a spouse’s relatives living in Afghanistan could result in a security concern. See ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding “presence in India of close family members, viewed in light of that country’s troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his spouse) having foreign family contacts, establish the ‘heightened risk’” in AG ¶¶ 7(b) and 7(e)).

The nature of a nation’s government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Afghanistan with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Afghanistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in Afghanistan.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it,

regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Afghanistan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Afghanistan has an enormous problem with terrorism. Applicant’s relationships with relatives living in Afghanistan create a potential conflict of interest because terrorists or the Taliban could place pressure on his family living in Afghanistan in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Department Counsel produced substantial evidence of Applicant’s contacts with family in Afghanistan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists five conditions that could mitigate foreign influence security concerns including:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;
- (b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee; and

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(b) applies. Applicant has frequent contact with his in-laws, who are citizens and residents of Afghanistan. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." In 1999, Applicant entered the United States, and in 2014, he became a U.S. citizen. His spouse lives in the United States, and she is a permanent U.S. resident. His son is a U.S. citizen. All of his siblings live in either Europe or the United States. His payments to relatives in Afghanistan after 2008, when his parents left Afghanistan, have been minimal.

Applicant's years of support to the DOD in Afghanistan as a linguist and cultural advisor, including the dangers that service entailed, weigh heavily towards mitigating security concerns. Applicant is currently serving in Afghanistan providing critical assistance to U.S. Armed Forces in a dangerous combat environment. He has offered to continue to risk his life to support the United States' goals in Afghanistan. He has shown his patriotism, loyalty, and fidelity to the United States during his approximately four years of support to DOD while serving in Afghanistan.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Afghanistan. Applicant's in-laws currently live in Afghanistan. Like every other resident of Afghanistan, they are at risk from terrorists and the Taliban.

It is important to be mindful of the United States' huge investment of manpower and money in Afghanistan, and Applicant has supported U.S. goals and objectives in Afghanistan. Applicant and his in-laws living in Afghanistan are potential targets of terrorists and the Taliban, and Applicant's potential access to classified information

could theoretically add risk to his relatives living in Afghanistan from lawless elements in Afghanistan.

In sum, Applicant's connections to his relatives living in Afghanistan are less significant than his connections to the United States. His employment in support of the U.S. Government, family living in the United States, performance of linguist duties in a combat zone, and U.S. citizenship are important factors weighing towards mitigation of security concerns. He ended his significant financial support for family living in Afghanistan in 2008 or 2010. His parents have moved to the United States. He has not visited his in-laws living in Afghanistan since his wedding in 2014. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B. Foreign influence concerns under Guideline B are mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, . . . determine security clearance eligibility or trustworthiness. . . .⁶

⁶ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

In Applicant's May 4, 2014 and September 26, 2016 SCAs, he intentionally and falsely responded, no, to this question: "Have you **EVER** provided financial support for any foreign national?" AG ¶ 16(a) is established.

AG ¶ 17(a) contains one condition that could mitigate security concerns. AG ¶ 17(a) states, "(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts."

During Applicant's May 9, 2011, May 6, 2014, and October 12, 2016 counter-intelligence interviews, he disclosed from 1999 to 2010, he provided financial support to his family living in Afghanistan. In his 2014 and 2016 counter-intelligence interviews, he explained the absence of the financial support information from his recently completed SCAs was because "HE was not aware HE had to disclose this information in HIS SF 86." GE 3 at 11; GE 4 at 10. At his hearing, he said he "was not paying attention to that question." Tr. 56.

The applicability of AG ¶ 17(a) has been limited by several Appeal Board decisions. An intentional omission allegation is not mitigated when an applicant admits the omission after an investigator tells him or her that the Government has already learned facts establishing the omission.⁷ If an Applicant provides false information in multiple interviews, voluntary, accurate disclosure during the third interview does not mitigate the falsification concern. ISCR Case No. 03-00577 at 5 (App. Bd. Dec. 11, 2006) (sustaining denial of security clearance and stating "Mitigating Condition 2 is not applicable to the facts of this case since it requires the falsification to have been an isolated incident, not recent, and that the correct information be voluntarily provided.").

In the instant case, Applicant made three false statements about providing support to his parents living in Afghanistan. He also made three truthful statements. His monthly payments over a nine-year period to his parents were substantial enough that he should not have forgotten them. The question is clear and easy to understand. In 2014, the counter-intelligence interviewer questioned him about leaving out the information on his 2014 SCA, which highlighted the issue for his next SCA. His SCA thoroughly addressed several questions, indicating he read the SCA and took significant time to complete it. Nevertheless, he failed to disclose the information about \$32,000 paid to family when they were in Afghanistan on his 2016 SCA. His false statements are not "isolated" and do not qualify for mitigation under AG ¶ 17(a). Personal conduct security concerns are not mitigated.

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(d):

⁷ ISCR Case No. 02-30369 at 5 (App. Bd. Oct. 27, 2006) (sustaining denial of security clearance); ISCR Case No. 04-00789 at 7 (App. Bd. June 28, 2006) (reversing grant of security clearance); ISCR Case No. 99-0557 at 4 (App. Bd. July 10, 2000) (reversing grant of security clearance).

(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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines B and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant and his spouse have frequent contact with his in-laws, who are citizens and residents of Afghanistan. Their frequent contacts are a manifestation of their care and concern for relatives living in Afghanistan. He provided financial support to his parents before they moved to the United States. Those relationships raise important foreign influence security concerns, and they must be balanced against his connections to the United States.

In 1999, Applicant entered the United States, and in 2014, he became a U.S. citizen. His spouse lives in the United States, and she is a permanent U.S. resident. His son is a U.S. citizen. All of his siblings live in either Europe or the United States. When he became a U.S. citizen, he took an oath of allegiance to the United States. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or violated any of his employer's rules.

Applicant served as a linguist, translator, linguist consultant, or cultural advisor for about four years in Afghanistan. He worked for U.S. government contractors. Applicant provided two character references and four certificates from Army and Marine Corps officers and enlisted personnel, who served with him in a U.S. designated combat zone. He made contributions to the U.S. military at personal risk. He is willing to continue to serve in Afghanistan in support of U.S. Armed Forces as a linguist, risking his life as part of his duties on behalf of the U.S. combat forces in Afghanistan. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable service as a linguist weighs heavily towards approval of his security clearance. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting “Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.”).

A Guideline B decision concerning Afghanistan must take into consideration the geopolitical situation and dangers there.⁸ Afghanistan is a dangerous place because of violence from the Taliban and terrorists. The Taliban and terrorists continue to threaten the Afghan Government, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The Afghan Government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Afghan Governments are allies in the war on terrorism.

The evidence against mitigation of security concerns under the personal conduct guideline is more substantial. Applicant's falsification of his SCAs in 2014 and 2016 by intentionally failing to disclose information about his financial support for his parents when they were living in Afghanistan was deliberate and improper. His falsification in a security context raises a serious security concern. The protection of national security relies on applicants to self-report conduct that jeopardizes security, even when that disclosure might damage the applicant's career. Applicant cannot be trusted to disclose potentially derogatory information. He did not establish his reliability, trustworthiness, and ability to protect classified information.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are mitigated; however, personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E:	Against APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

⁸ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge