



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02142

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: *Pro se*

09/10/2018

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated foreign influence. Eligibility for access to classified information is granted.

History of Case

On August 31, 2017, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016.

Applicant responded to the SOR on October 18, 2017, and requested a hearing. The case was assigned to me on February 8, 2018, and was scheduled for hearing on

April 18, 2018. At the scheduled hearing, the Government's case consisted of six exhibits (GEs 1-6); Applicant relied on one witness (himself) and three exhibits (AEs A-C). The transcript (Tr.) was received on May 1, 2018.

Besides its seven exhibits, the Government requested administrative notice of certain facts pertaining to Afghanistan. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006).

There being no objection, and for good cause shown, administrative notice was granted with respect to the requested facts and incorporated source documents addressing the geopolitical situation in Afghanistan. The Government's administrative notice and incorporated source documents were received as HE 1. Administrative notice was extended to the requested facts and incorporated source documents consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing the current status of Afghanistan.

In addition to taking official notice of the source documents covered by he administrative Notice, I took official notice, *sua sponte*, of *Background Note: Afghanistan*, U.S. Department of State (November 2011) This document contains pertinent background information covering Afghanistan. This document was received as HE 2.

Applicant, in turn, requested administrative notice be taken of additional facts and incorporated source documents pertaining to Afghanistan. There being no objection, and for good cause shown, administrative notice was granted with respect to Applicant's requested facts and incorporated source documents addressing the geopolitical situation in Afghanistan. Applicant's administrative notice request was received as HE 3.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with endorsements. For good cause shown, Applicant was granted 30 days to supplement the record, and the Government was afforded three days to respond. Within the time permitted, Applicant provided an emailed endorsement from his assigned superior who used his linguist services while he was working in counterintelligence in Afghanistan. Applicant's submission was admitted without objection as AE D.

Summary of Pleadings

Under Guideline B, Applicant allegedly (a) has immediate family members (parents,, three sisters and three brothers) who are citizens and residents of Afghanistan; (b) provides financial support to his mother since 2009; and (c) provided \$96,000 to his mother in 2009 to finance the purchase of a home in Afghanistan.

In his response to the SOR, Applicant admitted each of the allegations contained in the SOR with explanations. He claimed there is nothing about his family, or his interactions with them, that creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. with some explanations. Applicant claimed, too, that he will always choose the interests of national security of the United States over the interests of any citizen or resident of Afghanistan. He further claimed (a) he submitted applications to sponsor his father and mother to come to the United States as immigrants and eventually become naturalized U.S. citizens and (b) his intentions to submit similar applications for his brothers and sisters to come to the United States

Addressing the allegations pertaining to his providing financial support to his mother since 2009, Applicant claimed the funds he provided his parents six years previously were intended as gifts. He further claimed that the funds he furnished his mother in 2011 did not create any conflict of interest or be used to influence, manipulate, or pressure him.

Applicant also claimed in his response that he has no foreign businesses, financial, or property interests in Afghanistan. And, he claimed he was 23 years of age when he provided his parents a lump sum of money to purchase a home, has seen a great deal of combat over the past 10 years, while working directly in support of the U.S. mission in Afghanistan, and has witnessed his fellow Americans being killed in combat, which collectively has strengthened his character.

Findings of Fact

Applicant is a 29-year old linguist (GE 1; Tr. 45) for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born and raised in Afghanistan to parents of Afghan descent. (GEs 1-6) He never married and has no children. (GE 1) He earned a high school diploma in Afghanistan in January 2008. (GE 1) He attended a vocational school in Afghanistan between April 2015 and December 2015, but earned no degree or diploma. (GE 1) Applicant reported no military service in Afghanistan or the United States. (GEs 1-6)

In June 2009, Applicant received a special visa from the U.S. Army to immigrate to the United States. (GEs 1-6 and AE A; Tr. 31) He became a naturalized U.S. citizen in April 2015. (GEs 1-6; Tr. 32-33) Since January 2016, he has been employed by a U.S. company as a linguist embedded with U.S. Army forces operating in a combat zone in Afghanistan. (GEs 1-6; Tr. 33-34) Between January 2006 and June 2009, he was employed as a local hire linguist for U.S. forces operating in Afghanistan. (GE 1; Tr. 34)

Applicant's family members

As a young boy growing up in Afghanistan, Applicant was exposed to war. (Tr. 29) At an early age, he committed to providing linguist services to U.S. forces in Afghanistan

(GEs 1-6) To be sure, he worked his entire adult life providing linguist services to the U.S. Army. (GEs 1-6; Tr. 33-34) Applicant considers himself a loyal American who has worked under fire as an Army linguist embedded with operational forces in Afghanistan. (Tr. 34)

Applicant's father (a former member of the Afghan military) is a retired civilian worker of a branch of an Afghan government Kabul ministry. (GE 1; Tr. 36-40) He has never been a member of any Afghan political party and has no connections or ties to the Afghan government. (GEs 1-6; Tr. 39) He supports Applicant's linguist undertakings for the U.S. Army and never discusses Applicant's work in the frequent conversations they have with each other, generally on a weekly basis. (Tr. 37-41) Applicant last saw his father in 2015 while he visited Afghanistan to see his parents and siblings. (Tr. 45) In 2017, Applicant sponsored his father to come to the United States. Pending is a visa application with the U.S. Embassy in Kabul for Applicant's father to travel to the United States. (AE A)

Applicant's mother is a citizen of Afghanistan who immigrated to the United States and currently resides with Applicant. (Tr. 35-36) Applicant sponsored her to come to the United States in 2017, and she envisions applying for U.S. citizenship in the near future. (Tr. 35-36)

Applicant has three sisters (inclusive of twin sisters who are 18 years of age and a younger sister, age 13) who were born and raised in Afghanistan and are citizens and residents of the country. (GEs 1-6; Tr. 42-49) His twin sisters have recently finished the private school they were attending in Kabul that their parents financed without any support from the Afghan government. (Tr. 46-48) Applicant's youngest sister attends the same private school that her older sisters attended. (Tr. 51-52)

All three of Applicant's sisters reside with Applicant's father in the family home and have expressed their desire to come to the United States. (Tr. 49-52) None of his sisters have any affiliations or ties to the Afghan government. Applicant stays in touch with his sisters and communicates with them bi-weekly, but does not provide them with financial support. (Tr. 52) He last visited his sisters in 2015. (Tr. 47-52)

Applicant also has three brothers who are citizens of Afghanistan by birth. (ages 36, 23, and 17) with mixed places of residence. (GEs 1-6; Tr. 42-51) One of the brothers (age 36) currently resides in Austria and works in a restaurant. (GE 1; Tr. 42-43) This brother has no affiliations or ties (past or present) with the Afghan government (Tr. 43) A second brother (age 23) resides in Finland where he attends college. (Tr. 44) This brother, too, has no affiliations or ties to the Afghan government. (Tr. 44-45) Applicant keeps in touch with both older brothers every two to three weeks. (Tr. 43-45)

In addition to his two brothers who currently reside in Europe, Applicant has a third brother (youngest of the brothers at age 17), who is a citizen and resident of Afghanistan. (Tr. 50-51) He attends school in Afghanistan and maintains contact with Applicant every two to three weeks. (Tr. 51) Like his older brothers, this youngest brother has no affiliations or ties to the Afghan government. (Tr. 52)

Between 2009 and 2017, Applicant provided financial support to his parents. The funds he provided his parents over an eight year period were intended as gifts and totaled between \$500 and \$1,000 per gift. (Tr. 53-56) His furnished funds included a \$96,000 gift to his mother in 2011 for the purchase of a home in Afghanistan. (GEs 1-6) He assured that these funds he furnished his mother in 2011 will not create any conflict of interest or be used to influence, manipulate, or pressure him.

Country information on Afghanistan

Afghanistan is a country in Southwestern Asia. It is sometimes referred to as the crossroads of Central Asia. See *Background Note: Afghanistan, supra*, at 2. It has had a turbulent history.

Following invasions by Alexander, the Scythians, the White Huns, and the Turks, the Arabs invaded Afghanistan in 642 AD and introduced Islam. See *Background Note: Afghanistan, supra*, at 3. Arab rule held for several hundred years before giving way to the Persians who controlled the region until 998 before succumbing to the Turkic Ghaznavids. (*Id.*) Turkish rule under Mahmud was short-lived and was followed by attempts by various princes to rule sections of the country before the Mongol invasion of 1219 under Genghis Khan. (*Id.*)

For many centuries following Khan's death in 1227, the country was contested by a succession of chiefs and princes. By the late 14th century, Tamerlane (a Khan descendent) incorporated Afghanistan into a vast Asian empire. (*Id.*)

In 1747, Ahmad Shah Durrani (the founder of what is known today as Afghanistan) established his control over most of Afghanistan. British expansion in the 19th century was countered by Russian advances and precipitated Anglo-Afghan wars and later led to a boundary accord that created what would become modern Afghanistan. See *Background Note: Afghanistan, supra*, at 3.

Since the British relinquished control in August 1919, Afghanistan has been an independent state. *Background Note: Afghanistan, supra*, at 3-4. Between 1919 and 1973, Afghanistan moved away from its longstanding isolation under a succession of Muslim rulers: King Amanullah (1919-1929), Nadir Khan (1929-1933), and Mohammad Zahir Shah (Nadir Khan's 19-year-old son), who ruled Afghanistan for over 40 years (1933-1973). See *Background Note: Afghanistan, supra*.

Prime minister between 1953 and 1963, Sardar Mohammad Daoud mounted a military coup in 1973 and seized power amid charges of corruption and malfeasance against Zahir Shah and his royal family. Daoud proceeded to abolish the monarchy, abrogate the constitution, and declare Afghanistan a republic. (*Background Note: Afghanistan, supra*, at, 4-5). His economic and social reforms contributed little, however, to stabilizing political conditions in the country.

Following a Soviet-supported overthrow and assassination of Daoud in April 1978, a Marxist government was formed with the backing of the Soviets. (*Background Note: Afghanistan, supra*, at 5). Sur Muhammad Taraki was installed as the country's president

of the revolutionary council. Opposition to the Taraki government increased as many of members of Afghan elites, religious establishments, and intelligentsia were imprisoned, tortured, or murdered. A revolt against the Marxist government occurred in the summer of 1978 and quickly spread into a countrywide insurgency. (*Id.*)

Soviet invasion

Seeking to take advantage of the unrest following the April 1978 coup, the Soviet Union quickly signed a bilateral treaty of friendship and cooperation with the new Afghan regime and increased its military assistance to the regime. See *Background Note: Afghanistan, supra*, at 5-6. Faced with a deteriorating security situation, the Soviets invaded Afghanistan in December 1979, killed the Afghan ruler, and installed Babrak Karmal (an exiled leader of the Parcham faction) as the country's prime minister. (*Id.*)

Afghan freedom fighters (*mujahideen*) who opposed the Karmal communist regime, armed with weapons and training assistance from the U.S. and its allies, collaborated with other Peshawar-based guerilla groups in the 1980s to destabilize the Karmal regime. See *Background Note: Afghanistan, supra*, at 6-7. The resistance movement eventually led to an agreement known as the Geneva Accords (signed by the front-line states of Pakistan and Afghanistan, the United States, and the Soviet Union). The agreement served to ensure that Soviet forces withdrew from the country in accordance with their expressed commitments in February 1989. (*Id.*)

Ascendency of the Taliban

By the mid-1990s, the Taliban had risen to power in reaction to the anarchy and increase of warlords in the aftermath of the withdrawal of Soviet forces. Many of the Taliban had been educated in *madrassas* in Pakistan with roots in rural Pashtun areas of the country. See *Background Note: Afghanistan, supra*, at 7. Beginning with its capture of Kandahar in 1994, the Taliban mounted an aggressive expansion of its control throughout Afghanistan. By the end of 1998, its forces occupied almost 90 percent of the country, and reduced its opposition largely to a small sections of the northeast and the Panjshir valley. (*Id.*)

Bolstered by its imposition of an extreme interpretation of Islam on the entire country, the Taliban committed massive human rights violations (particularly directed at women and children), and committed serious atrocities against minority populations. From the mid-1990s, the Taliban provided sanctuary to Osama bin Laden, and provided a base of operations for his and other terrorist organizations. (*Background Note: Afghanistan, supra*, at 7-8). Bin Laden and his Al-Qaida group are known to have provided financial and political support to the Taliban, and Al-Qaida acknowledged their responsibility for the September 11, 2001 terrorist attacks against the United States.

Beginning in October 2001 (following the Taliban's refusal to expel bin Laden), the United States and its coalition partners initiated a military campaign, targeting terrorist facilities and Taliban military and political assets within Afghanistan. U.S. military and anti-Taliban forces routed the Taliban and caused their rapid disintegration. After the fall of Kabul in November 2001, a UN-sponsored conference was created to restore stability

and governance in Afghanistan. See *Background Note: Afghanistan, supra*, at 7-8. From this conference emerged a Transitional Authority headed by President Hamid Karzai. This authority (renamed the Transitional Islamic State of Afghanistan) was charged with the responsibility of drafting a constitution. (*Id.* at 8)

A new constitution was drafted and ratified by a constitutional loyal *jirga* on January 4, 2004. See *Background Note: Afghanistan, supra*, at 8. The Afghan constitution provides for indirect election of the National Assembly's upper house by the provincial councils and by reserved presidential appointments. On December 4, 2004, the country was renamed the Islamic Republic of Afghanistan. (*Id.*; *Country Specific Information: Afghanistan, supra*, at 1). Hamid Karzai was sworn in as Afghanistan's President on December 7, 2004. He presided over the new government's first convened parliament in late 2005. See *Background Note: Afghanistan, supra*.

Presidential and provincial elections in Afghanistan for 2010 were coordinated by the Afghanistan Independent Election Commission (IEC), with assistance from the UN. *Id.* Challenged presidential election results in 2010 have not been widely disseminated. See *Background Note: Afghanistan, supra*, at 8-9.

Political conditions in Afghanistan

A new democratic government assumed control of Afghanistan in 2004 following a popular election. While the national government has continued to expand its authority, it has been hampered in its ability to deliver necessary social services and remains dependent on U.S.-led assistance. See *Background Note: Afghanistan, supra*. With its international community support at work, its ability to secure its borders and maintain internal order is increasing. Although the Taliban-led insurgency in Afghanistan has lost ground in some areas, it remains resilient and capable of challenging U.S. and NATO goals. Today, Afghanistan's local government lags, and corruption remains widespread. See Administrative Notice, *supra*, at 3; *Country Reports on Terrorism 2016*, Ch. 5, Terrorist Safe Havens at 5, U.S. Department of State (July 2017)

Afghan insurgency and extremist networks, fueled by Taliban, Al Qaida, and Haqqani Network support, continue to assert power and intimidation within the country. See Administrative Notice, *supra* 4; *Country Reports on Terrorism 2016*, Chapter 2 at 1 U.S. Department of State (July 2017) Safety and security remain key concerns because these terrorist organizations continue to target U.S. and Afghan interests by suicide operations, bombings, assassinations, car-jackings, assaults, and hostage-taking. See Administrative Notice, *supra*, at 5; *Report on Enhancing Security and Stability in Afghanistan* at 1, U.S. Department of Defense (June 2015). Risks of terrorist activity remain extremely high at the present time. See Administrative Notice, *supra*, at 3-4

Human rights conditions in Afghanistan remain poor by all reported accounts. State Department Reports confirm active insurgent activity in Afghanistan. See *Country Reports on Human Rights Practices for 2016, Afghanistan*, U.S. Department of State The Department of State's 2014 Human Rights Report also noted widespread violence, predominantly indiscriminate attacks on civilians, armed insurgents groups' killing of persons affiliated with the Afghan government, and targeted violence against women and

girls. See Administrative Notice Request, *supra*, at 5-6; *Country Reports on Human Rights Practices for 2015: Afghanistan*, U.S. Department of State (March 2017).

No section of Afghanistan is safe or immune from risks of violence, kidnapping, hostage taking, military combat, operations, land-mines, banditry, armed rivalry between political and tribal groups, militant attacks, direct and indirect fire, suicide bombings, and insurgent attacks. See *Travel Warning, Afghanistan*, at 3-4; U.S. Department of State (March 2017). Kabul, in particular, has experienced increased militant attacks in recent years, including rocket attacks, vehicle-borne improvised explosive devices (IEDs), and suicide bombings. *Id.* Foreigners throughout the country continue to be targeted for violent attacks and kidnappings: some motivated by terrorism, and others by common criminal activity.

To date, Afghanistan has still encountered difficulties in building effective, honest, and loyal provincial and district institutions and lacks a coherent tribal engagement strategy for unifying the country. See Administrative Notice, *supra*, at 3-4; *Report on Enhancing Security and Stability in Afghanistan*, *supra*, at 1-2. Economic growth has been similarly slowed by a lack of investor confidence in the Afghan government and its prospects for the future.

U.S.-Afghanistan relations

Looking to the future, the United States recognizes the many challenges that the unity government of Afghanistan will continue to contend with as their leaders settle their own respective responsibilities. See *Report on Enhancing Security and Stability in Afghanistan*, *supra* at 3. Despite these challenges, the fundamental partnership between the U.S.-led coalition and the Afghan government remains strong. (*Id.*)

Since the fall of the Taliban, the United States has supported the creation of a broad-based government in Afghanistan, and has made a long-term commitment to help Afghanistan reconstitute and rebuild following years of war and unstable governments. The United States and its coalition partners in the international community currently provide important humanitarian assistance, capacity-building, security protection, counter-narcotic programs, and infrastructure projects. The United States has also brought important political influence to bear on the establishment of durable democratic principles that recognize and incorporate democratic principles, promote the rule of law and encourage transparent and accountable forms of government. See *Report on Enhancing Security and Stability in Afghanistan*, *supra*.

In May 2012, the United States and Afghanistan signed the Enduring Strategic Partnership Agreement, demonstrated the United States' shared commitment to the combating of terrorism and the promoting of democratic values and economic opportunity in Afghanistan and the region. See *U.S. Relations with Afghanistan Fact Sheet* at 1-2, U.S. Department of State (January 2017). Through new initiatives forged between Afghanistan and the United States, beginning with the Silk Road Initiative completed in 2011, as a means of reconstructing infrastructure links in the region, both countries have helped to bolster peace and stability in the region by supporting a

transition to trade and the opening of new markets in Central Asia and beyond. See *U.S. Relations with Afghanistan Fact Sheet* at 1-2.

What strategic options the United States ultimately adopts to enhance its working relations with Afghan's unity government in their joint efforts to limit the advances of an increasingly aggressive Taliban are uncertain at this time. Efforts between the two countries continue to be exerted to promote economic growth, bolster Afghanistan's business climate, improve the performance of the country's justice system, and help the Afghan government to maintain, and improve upon, the gains the country has made over the last decade in the areas of health, education, and women's rights. See *U.S. Relations with Afghanistan Fact Sheet, supra*, at 2.

Endorsements and Awards

Applicant is highly regarded by senior Marine commanders who worked closely with Applicant in Afghan military operations in 2008 and 2011. (AE B) They consistently credited Applicant with exceptional translation work while working in positions requiring high trust while embedded with military commands operating in Afghanistan. (AE B) They expressed their appreciation for his extraordinary linguist support that consistently exceeded their expectations. (AE B) Each of the Marine commanders he worked closely with in combat missions credited him with strong character traits that served him well in the performance of his duties. (AE B)

Others expressed appreciation for Applicant's linguist skills and support. The chief operating officer (CEO) of his defense contractor employer credited Applicant with being a key member of the company's linguist team and a major contributor to their assigned missions. (AE B) His CEO Expressed his pride in being able to count Applicant as a key element of his firm's success. Fellow linguists who worked with Applicant in Afghanistan consider him an important asset to his mission team and worthy of a position of trust. (AE B) And, DoD counterintelligence agents who interfaced with Applicant in Afghanistan over a period of years (2006-2017) credited Applicant with demonstrated reliability and leadership. (AEs B and D)

Applicant earned numerous certificates of merit achievement and appreciation from the military commands he worked closely with while assigned to Afghanistan. (AE C) These awards express gratitude for Applicant's commitment and achievements to his military commands while working foreign translation assignments. (AE C)

Policies

The SEAD 4, App. A lists guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and all of the "[c]onditions that could mitigate security concerns, if any. These guidelines must be

considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

The Concern: Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a 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. See AG ¶ 6.

Burden of Proof

By virtue of the principles and policies framed by the revised AGs, a decision to grant or continue an applicant's security clearance may be made only upon a

threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995) As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a highly regarded linguist for a U.S.-based defense contractor. He is an Afghan citizen by birth and a naturalized U.S. citizen with permanent residency in the United States. Foreign influence concerns relate to Applicant's having immediate and extended family members who are citizens and residents of Afghanistan, a country with a somewhat checkered history of wars, political instability, and violence.

Despite encouraging efforts in the development of strategic partnerships between Afghanistan and the United States in recent years, Afghanistan remains a war-torn country and one still in the process of establishing a stable democratic government that is able to build effective, honest, and loyal provincial and district institutions, provide effective protections for its constituent groups, and maintain cross-border security. The historically close relationship between Applicant and his immediate family members who reside in Afghanistan makes them potentially vulnerable to coercion and non-coercive measures.

Because Taliban, Al Qaida, and Haqqani Network insurgents operating in Afghanistan have a history of violating Afghan domestic laws and regulations, as well

as international laws, they are more likely to use improper and illegal means, or one of the other, to obtain classified information in Applicant's possession or control through his family members still residing in Afghanistan. DC ¶ 7(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," applies.

To date, none of Applicant's father and siblings residing in Afghanistan have any history of being subjected to any coercion or influence. These historical antecedents do limit the severity of any potential conflict situation. However, the absence of any past coercive measures taken by Afghan authorities does not completely absolve Applicant from coercive risks in the future given Afghanistan's considerable history of wars, political instability, violence, hostage taking, and abusive measures taken against its own citizens. For these reasons, ¶ DC 7(b), "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect 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," has some application to Applicant and his family members residing in Afghanistan.

Still, none of Applicant's immediate family members have any known affiliations or connections with the Afghan government or their military, or any other foreign government. Any potential conflict that might be associated with his sisters presents a low risk and not likely to pose any conflicts of interest for Applicant in the foreseeable future.

As a nation, Afghanistan continues to be a country with emerging strategic relationships with the United States and is a front-line partner in the war on terror. Because of the security dangers that still confront U.S. and Afghanistan forces operating in the region, Afghanistan remains a country that presents a heightened risk. Afghanistan is also a country that is benefitting from long-term U.S. commitments to help the Afghan government and its tribal regions reconstitute and rebuild their institutions and infrastructure in the aftermath of years of war, human rights abuses, and political and economic mismanagement under Soviet-backed regimes and Taliban rule. Given the current geopolitical infrastructure that exists in Afghanistan, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant's can be characterized as somewhat reduced, commensurate with improved security and political conditions on the ground in the country.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Afghanistan. The revised AGs take into account the country's demonstrated relations with the United

States as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime in issue do matter.

Applicant's situation is a special one for reasons that pertain wholly to his unique status and circumstances as a linguist working with military commands operating in Afghanistan. Not only has he been careful to avoid any frequent contact with his sisters and in-laws in Afghanistan, but he has been scrupulous about making certain his family members are not aware of his linguist assignments and duties that cover Afghan culture and political conditions.

In special circumstances involving linguists who put themselves in harm's way by working in unstable countries where they have family members residing, the Appeal Board has been quick to note that such individuals are more likely to recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's strong connections to the United States and to his community and his employment as a linguist for military commands operating in Afghanistan make it highly unlikely he would ever resolve any potential conflict against his U.S. interests.

Based on his case-specific circumstances, MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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," is available to Applicant. Balancing security interests associated with Applicant's Afghanistan-based family members, conclusions warrant that neither Applicant nor his immediate or extended family members residing in Afghanistan pose any heightened security risks that could subject them to potential pressures and influence from Afghan government and military officials.

Of benefit to Applicant, too, is MC ¶ 8(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." Applicant's demonstrated loyalty, patriotism, and professional commitments to the United States are well demonstrated and sufficient under these circumstances to neutralize all potential conflicts that are implicit in his relationships with his immediate and extended family residing in Afghanistan.

One other mitigating condition has application to Applicant's situation. MC ¶ 8(f), "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual." is fully applicable. He has no current financial interests in Afghanistan, and uncertain likelihood of ever acquiring any

inheritance rights in the country that could create any conflicts in the foreseeable future.

Whole-person assessment

To complete a whole-person assessment of Applicant's foreign influence risks to ascertain whether they are fully compatible with minimum security clearance eligibility requirements, Applicant's substantial civilian contributions to U.S. security interests as an Afghan linguist require careful balancing with the raised security concerns. His endorsements and certificates of appreciation attest to his valuable contributions to U.S. military and intelligence forces operating in Afghanistan. They are impressive. Further, Applicant is recognized for the important role he has played with the military commands and intelligence units he has served during his translation assignments.

Whole-person assessment is available also to minimize Applicant's exposure to conflicts of interests with his Afghan family members. So, in Applicant's case, the potential risk of coercion, pressure, or influence being brought to bear on him, or any of his respective family members residing in Afghanistan, is very low and mitigated.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B (FOREIGN INFLUENCE):	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant

Conclusions

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

Roger C. Wesley
Administrative Judge

