



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



In the matter of:)
)
) ISCR Case No. 18-00125
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated foreign influence security concerns relating to his connections to Afghanistan. He contributed to U.S. national security for more than 11 years by serving as a linguist under dangerous conditions in Afghanistan. Eligibility for access to classified information is granted.

Statement of the Case

On July 16, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On March 13, 2018, 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 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), effective June 8, 2017.

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 guideline.

Applicant provided an undated response to the SOR and requested a hearing. (HE 3) On May 10, 2018, Department Counsel was ready to proceed. On May 15, 2018, the case was assigned to me. On May 24, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 11, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered one exhibit; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 15-20; GE 1-4; Applicant Exhibit (AE) A (18 pages)). On June 19, 2018, DOHA received a transcript of the hearing.

Procedural Ruling

Department Counsel offered a summary for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Afghanistan with ten attachments. (Tr. 16; HE 4; I-X) 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. 16) Department Counsel's request for administrative notice is granted. (Tr. 16)

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/>. (Tr. 16-17) The other paragraphs are from Department Counsel's administrative notice request (quotation marks, bullet symbols, and internal footnotes are omitted).

Findings of Fact¹

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e. (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.

¹ 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.

Applicant is a 36-year-old linguist, and DOD contractors have employed him for more than 11 years in Afghanistan. (Tr. 5-6, 20) In 2004, he graduated from high school in Afghanistan, and he attended college for several years in Afghanistan. (Tr. 6) He has never married, and he does not have any children. (Tr. 6-7)

The SOR alleges and the record establishes: (1) Applicant's father, mother, nine brothers, and two sisters are citizens and residents of Afghanistan. (Tr. 22-23, 33); (2) In 2013, he gave his father about \$100,000 to build a home in Afghanistan. (Tr. 26); (3) He provided \$500 monthly to his parents until October 2016, and he does not currently provide financial support to them. (Tr. 33, 35); (4) Around 2000, his father retired as a field-grade officer from a noncombat-related office in the Afghan Army. (Tr. 25-26, 35); (5) Two of his brothers serve in the Afghan military. (Tr. 27, 35-36); and (6) The Afghan government employs three of his brothers. (Tr. 27-36) In addition to the relatives discussed in the SOR, he has a brother-in-law employed by the Afghan government, and nieces and nephews living in Afghanistan. (Tr. 27-38) The SOR does not allege, and the record does not establish, that his brothers' employments in the Afghan government are at a high enough level to raise a security concern. (GE 1)

Applicant wants his parents and family members to emigrate from Afghanistan to the United States.² Applicant's father left the Afghan military when the Taliban came to power in Afghanistan. His father's retirement pension is about \$1,200 per year. Applicant acknowledged the widespread dangers from criminals and insurgents in Afghanistan. Applicant's two brothers joined the Afghan military to assist the Coalition Forces in their efforts to suppress the Taliban.

Applicant has frequent contacts³ with his parents and siblings, who are citizens and residents of Afghanistan. (GE 4 at 16-18) One of Applicant's brothers is employed as a linguist with U.S. forces in Afghanistan, and he intends to immigrate to the United States. (Tr. 34-36)

Applicant works on a military base in Afghanistan, and family members can visit him on the base. (Tr. 31) He cannot visit them at their homes. (Tr. 31) He most recently met with his parents two years ago. (Tr. 32) Applicant's parents live in a relatively safe area of Afghanistan, and they have never been threatened because of Applicant's employment. (Tr. 32) He does not own any property or have a bank account in Afghanistan. (Tr. 32, 39) One of his brothers in the Afghan Army is a company-grade officer, and the other brother in the Afghan Army is enlisted. (Tr. 40) Applicant has renounced his Afghan citizenship. (GE 3 at 1)

From 2005 to 2009, Applicant was employed as a linguist for the United States forces. (Tr. 22) In 2009, he immigrated to the United States on a Special Immigrant

² Unless stated otherwise, information in this paragraph is from Applicant's SOR response.

³ 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).

Visa. (Tr. 23) He stayed in the United States for 11 months, and then he returned to Afghanistan to continue his work as a linguist with U.S. forces. (Tr. 23-25) His duties for the first two years as a linguist were with small Army and Marine Corps teams in the field conducting combat operations. (Tr. 41, 46; AE A) He faced dangers from enemy personnel and explosives. (Tr. 46-47) He subsequently became the linguist for multiple high-ranking U.S. Air Force officers and he translated for numerous U.S. officials including the U.S. Air Force Chief of Staff and the Secretary of the Air Force. (Tr. 43-45)

In 2016, Applicant purchased a home in the United States. (Tr. 30, 39) He values his U.S. home at about \$200,000. (SOR response) He has a bank account in the United States. (Tr. 33, 39) Applicant left the United States the day after his hearing to return to his duties with U.S. forces in Afghanistan. (Tr. 61)

Character Evidence

A U.S. Army infantry colonel wrote that Applicant provided support for U.S. forces including deployment into combat zones and exposure to hostile conditions. (Tr. 59) A noncommissioned officer responsible for supervising 100 linguists in Afghanistan described Applicant as one of the best linguists. (Tr. 59) Multiple certificates laud his contributions to Army and Marine Corps units as a linguist during 2005 to 2009.

In April 2018, an Air Force brigadier general wrote that Applicant provided invaluable support to the mission as his personal linguist.⁴ Applicant is “vital to continuity” for the U.S. Air Force because of his relationships with senior Afghan generals. Applicant “is the most skilled, experienced and trustworthy translator” in the organization, and he has an impressive history of support to the United States. In May 2017, another Air Force brigadier general wrote a similar letter of support for Applicant. In May 2017, an Air Force colonel indicated Applicant “was clearly the most capable and professional of my organization’s 50+ interpreters,” and he described Applicant as trustworthy, dedicated, and capable. In 2016, an Air Force major general wrote praising Applicant for his professionalism and contributions to mission accomplishment.

In total, Applicant provided letters signed from 2007 to 2018 praising his outstanding duty performance and contributions to the mission from one first sergeant, three lieutenant colonels, six colonels, six brigadier generals, and four major generals. Some officers provided multiple letters. The letters describe significant daily personal contact over lengthy periods of time. He also provided 16 certificates of appreciation or commendation and four command coins.

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.

⁴ The information in this paragraph is from enclosures to Applicant’s SOR response.

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 Advisory remains in effect for Afghanistan at Travel Advisory Level 4-Do not travel. 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, suicide bombings, widespread military combat operations, landmines, terrorist and insurgent attacks, banditry, armed rivalry between political and tribal groups, militant attacks, direct and indirect fire, 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.

No province in Afghanistan should be considered immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other foreign nationals at any time. Extremists associated with various Taliban networks, the Haqqani Network, the Islamic State in Iraq and Syria ("ISIS"), and members of other armed opposition groups are active throughout the country and remain violently opposed to the Afghan government and Coalition Forces. According to the U.S. State Department, the risk of kidnapping and hostage taking throughout Afghanistan, particularly against Westerners, has reached perhaps its most critical state in recent years. 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 2016 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. ISIS's branch in Afghanistan and Pakistan, Islamic State's Khorasan Province (ISIS-K), remained active in 2016 and was able to conduct a number of high-profile, mass-casualty attacks in Kabul against sectarian and Afghan government targets. The Haqqani Network continued to plan and conduct high profile attacks and assassinations against U.S. and 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. The Afghan government struggled to assert control over this remote terrain, where the population is largely detached from national institutions. Afghanistan generally cooperated with U.S. counterterrorism efforts, although there were some disagreements. President Ghani has actively pursued cross-border security cooperation with the Pakistan government, including the prospect of joint operations to reduce safe havens on both sides of the border.

According to the June 2017 U.S. Department of Defense report on Afghanistan, Afghanistan faces a continuing threat from as many as 20 insurgent and terrorist networks present or operating in the Afghanistan-Pakistan region, including the Taliban, al-Qa'ida (AQ), the Haqqani Network, ISIS-Khorasan (ISIL-K), and others, in what is the highest concentration of extremist and terrorist groups in the world. Department Counsel's administrative notice lists recent terrorist attacks in Afghanistan resulting in the deaths of hundreds of civilians and military personnel.

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.

There have been approximately 2,247 U.S. military deaths in Afghanistan between 2001 and 2016. Over 20,000 U.S. service members have been wounded in action. In January 2017, the United States has approximately 8,400 service members deployed to Afghanistan. U.S. forces work closely with Afghan forces combatting terrorists in Afghanistan with a goal of ensuring that Afghanistan is not a safe haven for terrorism. In July 2012, after the entry in force of the Enduring Strategic Partnership Agreement between the United States and Afghanistan, President Obama designated Afghanistan as a "Major Non-NATO Ally."

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
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's father, mother, nine brothers, and two sisters are citizens and residents of Afghanistan. In 2013, he gave his father about \$100,000 to build a home in Afghanistan. From about 2013 to October 2016, he provided \$500 monthly to his parents. Around 2000, His father retired as a field-grade officer from his position in the Afghan Army. Two of his brothers serve in the Afghan military. The Afghan government employs three of his brothers. Applicant has frequent contacts with his parents, siblings, and several friends, who are citizens and residents of Afghanistan. His frequent contacts and financial support are a manifestation of his care and concern for relatives living in Afghanistan.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security [or trustworthiness] eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

There are widely documented safety issues for residents of Afghanistan primarily because of terrorists and insurgents. Applicant has voluntarily shared in those dangers on behalf of the DOD for more than 11 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 relatives living in Afghanistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person 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 ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).⁵

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). The in-law presumption concerning foreign influence is not relevant here because Applicant is not married.

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13,

⁵ In accordance with "well established DoD policy [Applicant and his family's] religious affiliation play[ed] no part" in this decision. ISCR Case No. 08-06795 at 6 n. 3 (App. Bd. May 25, 2012).

2017)). Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country 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, and the situation in Afghanistan places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in Afghanistan or visiting Afghanistan does not pose a trustworthiness or 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 relative living in or visiting Afghanistan.⁶

Guideline B security or trustworthiness concerns are 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. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in 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, more

⁶ The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign country raise security [or trustworthiness] concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant's immediate family members -- has by virtue of a security clearance [or public trust position]. A person may be vulnerable to influence or pressure exerted on, or through, the person's immediate family members -- regardless of whether the person's family members are prominent or not.

than almost any country, has a severe problem with terrorism. Applicant's family in Afghanistan "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with relatives who are living in Afghanistan or visiting Afghanistan create a potential conflict of interest because terrorists, including the Taliban, could place pressure on his family 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 relationships with family in Afghanistan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(f) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six 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;

(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; and

(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.

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) and 8(f) apply. Applicant has frequent contact with his relatives, 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." Applicant resided in the United States for about one year.⁷ In 2016, he became a U.S. citizen. He has a home and bank account in the United States. He made a one-time \$100,000 payment to his father in Afghanistan so that his father could build a home, and he made \$500 monthly payment to his parents until October 2016. His employment for more than 11 years has been on behalf of the United States in Afghanistan.

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

⁷ ISCR Case No. 17-00629 (App. Bd. May 24, 2018) the Appeal Board discussed a translator's multiple tours on behalf of the United States in Iraq, limited time as a resident in the United States, and connections to family living in Iraq. The Appeal Board stated:

In general, an applicant's deployment to a combat zone in support of U.S. forces is not a factor that weighs against his or her national security eligibility. On the contrary, such deployments tend to establish various mitigating conditions such as [Directive] ¶ 8(b) ("there is no conflict of interest . . . because . . . the individual has such deep and longstanding loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest"); [Directive] ¶ 8(d) ("the foreign . . . activities are on U.S. Government business"); and [Directive] ¶ 8(f) ("the value or routine nature of the foreign business . . . is such that [it is] unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.")

Id. at 3 (internal footnotes omitted) (remanding administrative judge's denial of security clearance).

shown his patriotism, loyalty, and fidelity to the United States during his more than 11 years of support to DOD while serving in Afghanistan.

In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of such service on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") See *also* ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

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. His parents and siblings, and his siblings' families reside in Afghanistan. Like every other resident of Afghanistan, they are at risk from criminals, 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 family 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, performance of linguist duties in a combat zone, and U.S. citizenship are important factors weighing towards mitigation of security concerns. He ended his financial support for family living in Afghanistan in 2016. He has not met with his parents in Afghanistan for two years. He renounced his Afghan citizenship. His connections to the United States taken together are sufficient to overcome the foreign influence security concerns under Guideline B.

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):

(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 Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 36-year-old linguist, and DOD contractors have employed him for more than 11 years in Afghanistan. In 2004, he graduated from high school in Afghanistan, and he attended college for several years in Afghanistan. He has never married, and he does not have any children.

Applicant has frequent contact with his family, who are citizens and residents of Afghanistan. In the past, he has provided financial support to his parents. His frequent contacts with family in Afghanistan are a manifestation of his care and concern for his relatives living in Afghanistan. There is no evidence that his relatives are high-level Afghan government employees or military personnel. Those relationships raise important foreign influence security concerns, and they must be balanced against his connections to the United States.

Applicant served as a linguist, translator, or cultural advisor for more than 11 years in Afghanistan. He provided character references from personnel, who served with him in a U.S. designated combat zone including from one first sergeant, three lieutenant colonels, six colonels, six brigadier generals, and four major generals. He also provided 16 certificates of appreciation or commendation and four command coins. He made contributions at personal risk on behalf of 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 mitigating of foreign influence security concerns. 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 an exceptionally 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.

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. Eligibility for access to classified information is granted.

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 through 1.e: For Applicant

Conclusion

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

Mark Harvey
Administrative Judge

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).