



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



In the matter of:	)	
	)	
REDACTED	)	ADP Case No. 14-06434
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

05/24/2016

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant came to the United States from his native Pakistan in 1995. Foreign influence concerns persist because Applicant and his spouse have close family members who are resident citizens of Pakistan, which has a significant terrorism problem. Foreign preference concerns are not mitigated because Applicant, his spouse, and their children retain dual citizenship with Pakistan to avoid having to obtain visas to travel to Pakistan to see their close family members. Position of trust denied.

**Statement of the Case**

On July 30, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing the trustworthiness concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, as to why it could not grant him eligibility for a public trust position. The DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DoD Regulation 5200.2-R, *Personnel Security Program* (January 1987) as amended; and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

Applicant answered the SOR allegations on September 8, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On October 22, 2015, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. On November 2, 2015, I scheduled a hearing for November 30, 2015.

At the hearing, two Government exhibits (GEs 1-2) and three Applicant exhibits (AEs A-C) were admitted into evidence without objection. Applicant also testified, as reflected in a transcript (Tr.) received on December 9, 2015. Additionally, the Government requested that I take administrative notice of several facts pertinent to Pakistan and its relationships with other countries, including the United States.<sup>1</sup> Applicant did not object. Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intent to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. Applicant declined an opportunity to submit rebuttal or to propose facts for administrative notice after the hearing. The facts administratively noticed are set forth below.

### **Summary of SOR Allegations**

The SOR alleges under Guideline B that Applicant's father (SOR ¶ 1.a), brother (SOR ¶ 1.b), six sisters (SOR ¶ 1.c), and mother-in-law (SOR ¶ 1.d) are resident citizens of Pakistan, and that his father had worked for the federal government in Pakistan before he retired (SOR ¶ 1.e). Under Guideline C, Applicant and his spouse allegedly maintain dual citizenship with Pakistan and the United States for ease of travel (SOR ¶ 2.a), and their three children have dual citizenship with Pakistan and their native United States (SOR ¶ 2.b).

When he answered the SOR, Applicant admitted the Pakistan residency and citizenship of his father, his siblings, and his mother-in-law. Applicant also admitted that his father had worked for a federal government office in Pakistan until he retired, but that there was nothing remarkable about his father's service. Applicant admitted that he and his spouse have dual citizenship with their native Pakistan and the United States, but since their U.S. naturalization, their travel to Pakistan to see their parents has been on their U.S. passports. Applicant admitted that their children have derivative dual citizenship with Pakistan through him and his spouse.

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<sup>1</sup>With its November 23, 2015 Administrative Notice request, the Government also submitted a document titled Augmentation of Administrative Notice, also dated November 23, 2015. As detailed in the Augmentation of Administrative Notice, the Government did not request that notice be taken of entire documents, but rather of specific facts. The Government relied on four publications from the U.S. State Department: *Country Reports on Terrorism 2014, Chapter 5-Terrorist Safe Havens*, dated April 2015; *Country Reports on Terrorism 2014, Chapter 2-Country Reports: South and Central Asia Overview*, dated April 2015; Travel Warning: Pakistan, dated August 28, 2015; and *Country Reports on Human Rights Practices for 2014: Pakistan*. Additionally, the Government relied on a White House Press Briefing dated May 2, 2011, concerning the killing of Osama Bin Laden. The Government provided only the summary page from the *Human Rights* report.

## Findings of Fact

Applicant's admissions to the Pakistan citizenship and residency of his family members and to him, his spouse, and their children holding dual citizenship with Pakistan and the United States, are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant was born in Pakistan in 1970 to natives of India who acquired Pakistani citizenship. His mother was a homemaker until her death. (AE C.) His father retired in December 1994 from a job in accounting with an office of the federal government in Pakistan. (GE 1; AE B.) Applicant has a bachelor's degree earned in his native Pakistan in 1993. After working on developing computer applications in marketing for a private company in Pakistan, Applicant came to the United States in August 1995 to pursue his master's degree in computer science.<sup>2</sup> He has completed nearly all of the requirements for the degree. He went to Pakistan when his mother died in February 1997, and after he returned to the United States, he was too busy to complete his degree. (GE 1; Tr. 31-36.) He had started working for a health services company in October 1996. His employer sponsored him for an H-1 visa. (Tr. 92.) Around July 2004, the company was acquired, and Applicant's employment was transferred to the new company. (GE 1.) For the past two years, Applicant has been an information technology security manager. (AE A; Tr. 36.)

Applicant traveled to Pakistan to see his father and siblings for about three weeks from May to June 1998. He returned to Pakistan from January 1999 to February 1999 for his marriage to a native citizen of Pakistan. (GE 1; Tr. 38.) He went to Pakistan again in September 1999 and in August 2000. Applicant's spouse came to the United States in 1999 (Tr. 94), and in February 2001, she gave birth to their son. They later had two daughters, who were born in September 2002 and June 2010 in the United States. Their children have dual citizenship with Pakistan based on Applicant's and his spouse's Pakistani citizenship.<sup>3</sup> (GEs 1, 2; Tr. 53-54.)

Applicant traveled to Pakistan from June to July 2001, January to February 2003, and January to February 2004. He renewed his Pakistani passport in September 2006 for another five years. In March 2007, Applicant's spouse became a naturalized U.S. citizen.<sup>4</sup> Applicant, who was not naturalized in the United States until March 2008 (GE 1; Tr. 38), traveled on his Pakistani passport to Pakistan for six weeks from July 2007 to September 2007. He obtained a U.S. passport six days after his U.S. naturalization. All foreign travel has since been on his U.S. passport, including to Pakistan to visit family members in July 2009, August 2011, and December 2014. (GEs 1, 2; Tr. 45-46.) Applicant's spouse and

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<sup>2</sup> Applicant came to the United States because his "badge mates" were leaving for the United States for graduate study. (Tr. 33-34.)

<sup>3</sup> Citizenship in Pakistan is derived from birth in the country, although for children born abroad after 2000, citizenship may be derived by descent if either the mother or father is a citizen and the child is registered with the proper authorities. See the U.S. State Department's *Pakistan 2015 Human Rights Report*, which may be accessed at [www.state.gov](http://www.state.gov).

<sup>4</sup> Applicant and his spouse submitted their applications for U.S. citizenship at the same time. (Tr. 93.)

children traveled to Pakistan earlier in the summer of 2011 and then returned to the United States with him in September 2011. They split their time between Applicant's and his spouse's families when in Pakistan. (Tr. 60.) Applicant's spouse and children did not accompany him on his trip to Pakistan in December 2014. (Tr. 59-60.)

Applicant has taken no steps to renew his Pakistani passport. (Tr. 46.) He has a National Identity Card for Overseas Pakistanis (NICOP) that identifies him as an overseas citizen of Pakistan.<sup>5</sup> While it affords no special treatment at the border, he does not need to obtain a visa to travel to Pakistan with the card. (Tr. 46-48.) There is also no limit on his length of stay in Pakistan. (Tr. 48-49.) Applicant's children have never held Pakistani passports, but they have NICOP cards. (Tr. 53-54.) Applicant's spouse had a Pakistani passport, but he believes her foreign passport has expired. She has traveled solely on her U.S. passport since becoming a U.S. citizen. (Tr. 86.)

On June 16, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He disclosed the dual citizenship status for him, his spouse, and their three children. He had taken no action to renounce his citizenship with Pakistan, explaining that "Pakistan allows [its citizens] to keep dual citizenship with the United States." Applicant also reported that he had held a valid passport with Pakistan until September 6, 2011. Applicant indicated that he had monthly telephone contact with his father and his spouse's mother, both retired and resident citizens of Pakistan. Applicant described his contact with his six sisters and his brother in Pakistan as annually by telephone. As for their occupations, his brother works for a private Internet service provider in Pakistan (Tr. 57) while his six sisters (sisters #1-#6), who range in age from 55 to 41, are all homemakers. Applicant responded "yes" to whether he had ever provided financial support for any foreign national and indicated that he had sent \$2,000 in 2009, \$1,000 in 2011, and \$1,000 in 2012, to a paternal aunt in India for her support. He had no foreign assets of his own to report. Applicant listed his foreign travel to Pakistan to visit his foreign family members in response to whether he had used a foreign passport for travel and in response to foreign travel outside the United States in the last seven years. (GE 1.)

On August 4, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant explained that he maintained his citizenship with Pakistan for easier travel to Pakistan to visit his father and that he would not be willing to renounce his Pakistani citizenship because it would make it more difficult to visit his father. He denied any eligibility for any benefits from his dual citizenship or any exercise of his Pakistani citizenship to his advantage. Applicant indicated he would be willing to relinquish his expired Pakistani passport because he does not need it. He denied any problems while on trips to visit his family members in Pakistan. About his father's previous employment, Applicant related that his father had worked in accounting for a government office in Pakistan, but neither his father nor Applicant's other foreign relatives has any current professional, academic, or social connection to a foreign national or entity.

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<sup>5</sup> In its *Pakistan Travel Warning* issued on August 28, 2015, the U.S. State Department reports that all U.S. citizens, regardless of age, must have a valid passport and visa for Pakistan, unless they have a Pakistani passport or National Identity Card for Overseas Pakistanis (NICOP).

Applicant confirmed the information previously provided about his siblings in Pakistan. Apart from his spouse and his father, none of his foreign relatives know that he is undergoing consideration for a public trust position. He indicated that he had no contact with his aunt in India for whom he provided financial support at his father's request. He sent the funds to his father's sister-in-law through wire transfer to a bank in India, and she gave the money to Applicant's aunt. (GE 2.) Applicant's paternal aunt had health issues and could not afford to pay for her medical care. (Tr. 67-68.)

Applicant's father was a government servant in a local office until he retired in 1994. He owns his home in Pakistan. Applicant's brother and his family live on the second floor of his father's home. Sisters #1 and #6 and their spouses reside with Applicant's father on the first floor. Applicant's other sisters live in the same neighborhood as their father. Sister #1's spouse is a freelance writer. Sister #2's spouse has his own consulting business in the development of business applications. Sister #3's spouse is a mechanical engineer. Applicant knows little about this brother-in-law's employment other than that he does not work for the Pakistan government. Sister #4's spouse had been in banking but was unemployed and considering starting his own business, "maybe in real estate," as of late November 2015. Sister #5's spouse is a consultant, although Applicant knows little about his work other than that his brother-in-law "does buying and selling." Sister #6's spouse works for a private television station in Pakistan. (Tr. 56, 58, 60-66.) None of Applicant's family members in Pakistan has served in that country's military. (Tr. 67.)

Applicant stays with his father during his trips to Pakistan. (Tr. 58.) Applicant has not provided any financial support for his father, who receives a government pension sufficient for his support. Applicant last visited his father in Pakistan in December 2014. During that trip, he did not have to produce his NICOP card to Pakistan's border officials. He believes he is already in Pakistan's records system. (Tr. 48.) Most of Applicant's trips to Pakistan have been of three weeks duration. (Tr. 39-42.) Applicant's contact with his father is by telephone. They have contact at least once every couple of months and more frequently when his father is not feeling well. Applicant spoke to his father in November 2015. (Tr. 43.) Applicant's father last visited Applicant and his family in the United States in 2010, when Applicant's youngest child was born. (Tr. 44.) Applicant's brother has four children, and he works long hours so Applicant rarely has contact with him. (Tr. 57.) Applicant did not see sister #3 when he was last in Pakistan in December 2014. He saw his sister in the United States in September 2015. Her spouse is trying to establish himself in the United States. (Tr. 66-67.) Applicant has telephone contact with his sisters in Pakistan every few months. (Tr. 95.) According to Applicant, only his father and his spouse know that he is applying for a sensitive position. (GE 2.)

Applicant believes that his mother-in-law in Pakistan lives off her deceased husband's pension from his work in a state bank. (Tr. 50-51.) Applicant's spouse has two younger brothers and one older sister. Her siblings are married and resident citizens of Pakistan. One brother works in accounting for a state bank. The other brother is an engineer for a private hospital. His spouse's sister does not work outside of the home. (Tr. 51-53.)

Applicant and his spouse own their home in the United States. They purchased their home in 2008 for \$275,000. They owed less than \$200,000 on the home as of November 2015. (Tr. 76-77.) Applicant bought his first home in the United States in October 2004. (GE 1.) He and his spouse have no foreign financial assets. (GEs 1, 2; Tr. 49, 86.) Applicant's annual salary is currently around \$106,000. (Tr. 69.) His spouse does not work outside the home. She attended the same university in Pakistan as Applicant and has a degree in electrical engineering. (Tr. 94.) Their children attend public schools. (Tr. 55-56.) They do not intend to return to Pakistan to live. (Tr. 94.) Applicant is involved in his local community and is known as a leader in opening dialogue among neighbors, schools, police, and town government toward a climate of mutual understanding and respect. Applicant has impressed the town's first selectman with his intelligence, compassion, and energy. Applicant's neighbor benefitted from the kindness and care Applicant provided the neighbor's grandmother when the neighbor was unavailable. Applicant and his spouse have actively supported their children's elementary school by attending school events, supporting fundraisers, and fostering a collaborative relationship between the school and home environments. Applicant has been involved since 2004 in a worldwide organization in communication and leadership development. (AE A; Tr. 75, 84-86.) Applicant has not voted in a Pakistan election since his U.S. naturalization. (Tr. 87.)

Applicant has extended his volunteerism to his work as well. He has always been willing to participate and embrace the biggest challenges to ensure that the company meets its commitments to the community. At work, Applicant is directly responsible for maintaining database environments and insuring that consumer data is protected through audit and compliance protocols. Applicant's manager has found Applicant's work ethic and dedication to their employer to be "second to none." Applicant earned the trust of both external and internal auditors, and he is considered the "de facto expert on the industry compliance standards." Applicant has excelled beyond his manager's expectations. His employee reviews throughout the years have been excellent. Applicant is considered an integral member of the team and a very valuable contributor to the company. A manager in the business liaison area describes Applicant as "an experienced and seasoned technical advisor." Applicant has an outstanding ability to educate and explain how various systems interact. (AE A.) A project manager and a security content knowledge expert also provided very favorable character references for Applicant. Applicant has been very knowledgeable, thorough, and calm during the stress of annual audits. They have no concerns about Applicant's personal integrity or honesty. (AE A.) Applicant has never received any written reprimands for violating any security procedure. (Tr. 80.)

### **Administrative Notice**

The United States has had diplomatic relations with Pakistan since Pakistan's creation in 1947. Over the decades, the two countries' relationship has been guided by their common interests in a peaceful, stable, and prosperous region. The September 11, 2001, attacks in the United States by al-Qaida led to closer coordination between Pakistan and the United States on security and stability in South Asia. Pakistan pledged cooperation with the United States in counterterrorism efforts, which included locating and shutting down terrorist camps within Pakistan's borders, cracking down on extremist groups, and

withdrawing support for the Taliban regime in Afghanistan. Since 2001, Pakistan has captured more than 600 Al-Qaida members and their allies. In October 2009, the U.S. Congress passed the Enhanced Partnership with Pakistan Act to demonstrate the U.S. long-term commitment to cooperate with the Pakistani people and their civilian institutions. Since the passage of the act, the U.S. government has committed over \$5 billion in civilian assistance to Pakistan focused on five priority areas: energy; economic growth, including agriculture; community stabilization of underdeveloped areas vulnerable to violent extremism; education; and health. U.S. security assistance to Pakistan is focused on strengthening the counterterrorism and counterinsurgency capabilities of Pakistan's security forces and promoting closer security ties with the United States.<sup>6</sup>

The United States made it clear to Pakistan following the September 11, 2001 terrorist attack that it would pursue Osama bin Laden wherever he might be. On May 1, 2011, U.S. Special Forces personnel raided a large al-Qaida compound in Pakistan and killed bin Laden. The United States remains concerned about the continued presence of terrorist and other extremist groups in Pakistan. These groups operate, plan, and conduct domestic, regional, and global attacks from safe havens within Pakistan. Portions of Pakistan's Federally Administered Tribal Areas and of the Khyber Pakhtunkhwa and Balochistan provinces remain a safe haven for terrorist groups, such as Al-Qaida, the Haqqani Network, Tehrik-e Taliban Pakistan (TTP), Lashkar i Jhangvi, and the Afghan Taliban. In 2014, Pakistan launched military operations to eliminate these terrorist safe havens, targeting groups that conducted attacks within Pakistan such as the TTP, but Lashkar e-Tayyiba (LeT) was allowed to continue to operate, train, and propagandize in Pakistan with impunity. In 2014, terrorists used remote-controlled improvised explosive devices, suicide bombers, targeted assassinations, rocket-propelled grenades, and other combat tactics to attack schools, markets, government institutions, mosques, and other places of worship. Karachi in particular continued to suffer from political and ethnic violence. After at least 144 people, including 132 children, were killed in a December 2014 attack by armed TTP militants on an Army-run school in Peshawar, the government announced a National Action Plan against terrorism. Pakistan's law enforcement and national security structure needs improvement in interagency cooperation and coordination.

The Department of State continues to warn U.S. citizens against all non-essential travel to Pakistan because of the presence of several foreign and indigenous terrorist groups which pose a danger to U.S. citizens throughout Pakistan and frequent terrorist attacks in Pakistan, which range from targeted killings and kidnappings to armed assaults against heavily guarded facilities. Threat reporting as of August 2015 indicates that terrorist groups continue to seek opportunities to attack locations where U.S. citizens and Westerners are known to congregate or visit. U.S. citizens are warned to avoid large gatherings. Terrorists and criminal groups regularly resort to kidnapping for ransom in

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<sup>6</sup> Consistent with my obligation to make assessments based on timely information in cases involving foreign influence, I reviewed the U.S. State Department's *Fact Sheet*, dated October 7, 2015, concerning U.S. relations with Pakistan, in addition to the source material relied on by the Government in its Administrative Notice request. The *Fact Sheet* is available at [www.state.gov](http://www.state.gov).

Pakistan. In May 2015, a U.S. citizen was released after being kidnapped in a residential area of Karachi in February 2015. During the first eight months of 2015, there were more than 200 terror-related incidents, some targeting U.S. citizens. In April 2015, a U.S. educator was shot by two gunmen on motorbikes and seriously injured while driving her own vehicle in Karachi. Citing security concerns, Pakistani government intelligence officials frequently stop U.S. citizens outside the Consulate in Karachi and obtain their personal information before allowing them to proceed. The U.S. State Department also reports that U.S. citizens might later be visited at their homes or offices and questioned about the nature of their business in Pakistan. Because of the terrorist concerns, travel by U.S. government personnel within Pakistan is often restricted. U.S. government personnel are prohibited from attending services at places of worship in Karachi, Lahore, and Peshawar, and outside of the diplomatic enclave in Islamabad without prior approval because places of worship have frequently been targeted for attack by terrorists.

The U.S. State Department's human rights reports on Pakistan for 2014 and 2015 reflect orderly transitions in the presidency, military, and judiciary.<sup>7</sup> Yet, human rights problems persisted, the most serious being extrajudicial and targeted killings, disappearances, torture, lack of the rule of law, gender inequality, and sectarian violence. Other human rights problems included poor prison conditions, arbitrary detention, lengthy pretrial detention, a weak criminal justice system, lack of judicial independence in the lower courts, and government infringement on citizens' privacy rights. Corruption within the government and police, and lack of government accountability, led to abuses often being unpunished.

## **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) The standard that must be met for assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with national security. (See Regulation ¶ C8.2.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an Applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the

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<sup>7</sup> The U.S. State Department's *Pakistan 2015 Human Rights Report* reflects the persistent nature of the human rights abuses reported for 2014.



“whole-person concept.” The administrative judge must consider all available reliable information about the person, past and present, favorable and unfavorable. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B—Foreign Influence**

The security and trustworthiness concern relating to the guideline for foreign influence is articulated in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant and his spouse are dual citizens of their native Pakistan and the United States, where they were naturalized in March 2008 and March 2007, respectively. Their children are lifelong native resident citizens of the United States, and Pakistani citizens by descent. All their other close family members (his father, her mother, his seven siblings, and her three siblings) are resident citizens of Pakistan. An individual is not automatically disqualified from being granted a position of trust because he has connections to or an

interest in a foreign country. However, AG ¶ 7(a) is implicated if contacts create a heightened risk of foreign influence. AG ¶ 7(a) provides as follows:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

The “heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Pakistan is an important partner of the United States in the fight against terrorism in the region. Even so, foreign influence concerns are not limited to countries deemed hostile to the United States. Relations between nations can shift, sometimes unexpectedly, and even friendly nations can have profound disagreements with the United States over matters that they view as important to their vital interests or national security.<sup>8</sup>

Applicant’s and his spouse’s ties of affection, especially to their parents, are evident in several aspects and heighten the risk of foreign influence. Applicant has ongoing telephone contact monthly to once every two months and sometimes more frequently with his father. Applicant has traveled to Pakistan approximately every other year between February 1997 and December 2014, primarily to see his father. His spouse and children have traveled to Pakistan to see both families. During the summer of 2011, his spouse and children stayed in Pakistan for an extended period. Applicant characterized as rare his telephone contact with his siblings in Pakistan. On his SF 86, he indicated that he has annual contact. At his hearing, he testified that he is in contact with his sisters every few months. He has positive relations with his siblings and sees them when he is in Pakistan.

Applicant’s spouse’s contacts with her family in Pakistan are not fully set forth in the record. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to his spouse’s immediate family members. *See* ISCR Case No. 12-00084 (App. Bd. May 22, 2014); ISCR Case No. 07-17673 (App. Bd. Apr. 2, 2009). Applicant indicated on his SF 86 that he has monthly

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<sup>8</sup> See ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002) where the DOHA Appeal Board cautioned against an overreliance on simplistic distinctions between friendly and hostile nations in adjudicating Guideline B cases. While the case involved security clearance eligibility rather than a position of trust, the assessment of foreign influence concerns makes no distinction whether an applicant is seeking a clearance or a position of trust.

contact with his mother-in-law. It is likely that his spouse speaks with her mother during those telephone calls, if not more frequently. Applicant's spouse and children stay with her mother during at least part of the time when they are in Pakistan.

Only Applicant's father had any connection to Pakistan's government, and he retired more than 21 years ago. His father relies in part for his support on his government pension, but there is no evidence that he is more susceptible to pressure or coercion than any other person similarly situated. There is no evidence that Applicant's or his spouse's family members in Pakistan have been targeted or pressured by Pakistani governmental, military, or security officials, or that Applicant, his spouse, or their children have had other than routine contact with Pakistani officials on their trips to Pakistan. However, Pakistan is a dangerous country to its citizens and to U.S. visitors because of ongoing targeted or indiscriminate terrorist activity, including in the city where Applicant's and his spouse's family members reside. Terrorist and other extremist groups with interests inimical to the United States operate freely in parts of Pakistan and pose a significant threat to Pakistan's sovereignty and to U.S. interests. There is no evidence that terrorists have approached or threatened Applicant's and his spouse's foreign family members, but the situation in Pakistan poses a heightened risk. Applicant's and his spouse's connections and contact with family members in Pakistan, coupled with the significant terrorism risk and human rights conditions in Pakistan, raise a heightened risk of undue foreign influence. In addition to AG ¶ 7(a), the following disqualifying conditions under AG ¶ 7 apply:

- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information, and

- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The nature and extent of Applicant's contacts with his and his spouse's family members are reasonable and to be expected, given Applicant and his spouse are the only members of their families who have emigrated. Yet, these very connections negate the possibility of mitigation under AG ¶ 8(a), which provides:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.

The risk of terrorist activity in Pakistan has led the U.S. State Department to warn travelers to the country. Given the human rights abuses and terrorism risks in Pakistan, Applicant could be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his and his spouse's family members in

Pakistan. Applicant has historically traveled to Pakistan once every two years and there is no indication that he intends to change that behavior. Perhaps more importantly, his spouse and children are likely to travel to Pakistan in the future as well to see family members. Their travel to Pakistan raises additional vulnerability concerns from terrorists and other lawless elements.

AG ¶ 8(b) provides for mitigation when the loyalty or obligation to foreign persons is so minimal or the applicant has such deep and longstanding ties to the United States that he can be expected to resolve conflicts in the interests of the United States despite significant bonds to foreign persons:

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant's loyalties and obligations to his family members in Pakistan are strong, as evidenced by his ongoing telephone contacts, his travels to Pakistan, and his willingness to provide financial support for an aunt in India at his father's request. He does not satisfy the first component of mitigating condition AG ¶ 8(b). About the nature of his ties to the United States, there is no evidence that Applicant intended to immigrate to the United States when he came for graduate study in August 1995. He explained that he came to the United States because all his friends were coming here for higher education. However, while he was pursuing his graduate studies, he began working on information technology compliance issues for a health services company. Under the sponsorship of his employer, he received an H-1 visa and began to develop significant ties to the United States. Applicant returned to Pakistan to marry in 1999, but he brought his spouse to the United States. Both Applicant and his spouse made conscious decisions to become U.S. citizens, and when they took the oath of naturalization in March 2008 and March 2007, respectively, they swore allegiance to the United States over all other countries. Applicant acquired a U.S. passport in March 2008, which he has since used for all foreign travel, including to Pakistan in July 2009 and August 2011 when his Pakistani passport was still valid. Applicant's three children were all born in the United States and attend public schools. Applicant bought his first home in the United States in October 2004. Four years later, he purchased his current residence. Actively involved in his local community, he has volunteered at his children's school and in community outreach activities at work. He has been a leader in opening communication between neighbors, schools, police, and town government toward fostering mutual understanding and respect in his diverse community. Applicant has been a valuable contributor at work. His financial assets, including his salary, are all in the United States. Applicant intends to live permanently in the United States, and he and his family appear to be well integrated in their local community.

Applicant's retention of his citizenship with Pakistan does not necessarily mean that he has divided allegiance. However, by maintaining his foreign citizen to ease his travel to visit family members in Pakistan, Applicant makes it more difficult to mitigate the foreign

influence concerns. With his NICOP card identifying him as an overseas citizen of Pakistan, Applicant can travel to Pakistan without a visa on his U.S. passport with no time limit on the duration of his stay. When Applicant last traveled to Pakistan in December 2014, he was not asked to produce his NICOP card. He suspects it was because his identity is of record in Pakistan. Applicant acquired NICOP cards for his children, so their U.S. births are registered in Pakistan. Applicant remains unwilling to renounce his foreign citizenship because it would make it more difficult for him to visit his father. Concerns are not fully mitigated on the issue of what he would do if placed in the untenable position of having to choose between his family and his sensitive responsibilities. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), “Application of the guidelines is not a comment on an applicant’s patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member.” The foreign influence concerns are only partially mitigated under AG ¶ 8(b).

Concerning AG ¶ 8(c), “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation,” Applicant’s contacts every few months with his siblings can reasonably be characterized as infrequent. However, Applicant’s relationship with his siblings is not casual. Applicant visits his siblings when he is in Pakistan. Moreover, the relationship of his siblings to Applicant’s father has to be considered as well. Three of his siblings depend on Applicant’s father for their housing, so there is the potential for undue influence or coercion through his siblings to his father with whom Applicant shares a close bond.

### **Guideline C—Foreign Preference**

The security concern relating to the guideline for foreign preference is articulated in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Applicant and his spouse are citizens of their native Pakistan from birth and of the United States by choice. Applicant’s three children have dual citizenship with their native United States and with Pakistan by descent. Retention of foreign citizenship acquired from birth out of respect for one’s ethnic heritage, for example, is not disqualifying in the absence of an exercise of a right, privilege, or obligation of that citizenship. See AG ¶ 11(a), “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” After Applicant became a naturalized U.S. citizen in March 2008, he retained his foreign passport, but he did not use it for travel, and it expired in 2011. Since Applicant has taken no steps to renew his Pakistani passport, disqualifying condition AG ¶ 10(a), “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member . . . includ[ing] but . . . not limited to . . . possession of a current foreign passport,” is not applicable. Applicant has shown that he

can enter Pakistan on a U.S. passport, and while he remains eligible to re-acquire a Pakistani passport, he does not intend to do so.

However, as a citizen of Pakistan with an identity card which replaces the need for a visa on his U.S. passport and allows for extended stays in Pakistan, Applicant is entitled to a travel privilege and convenience not available to non-Pakistanis. Applicant's retention and use of his Pakistani citizenship under these circumstances could be considered the acceptance of a benefit from Pakistan afforded by virtue of his Pakistani citizenship. See AG ¶ 10(a)(3), "accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country." Applicant did not have to present his NICOP when he entered Pakistan on his U.S. passport in December 2014, but there is also no indication that he applied for a travel visa as a U.S. citizen. It may reasonably be inferred that he accepted a benefit afforded to him by virtue of his Pakistani citizenship as recently as December 2014. Applicant disclosed the dates of issuance and expiration for his Pakistani passports on his SF 86, but he did not report a current Pakistan identity card, so it is unclear when his NICOP was issued or when it expires.

Applicant's dual citizenship is based on his birth in a foreign country, but it is difficult to mitigate the foreign preference concerns under AG ¶ 11(a) because of his acceptance of the travel benefits afforded him by his NICOP card. Applicant advised an OPM investigator in August 2014 that he was not willing to renounce his Pakistani citizenship because it would make it harder for him to visit his father. Applicant is apparently not willing to incur the burdens of the cost and time of obtaining a visa or of having a limit on his stay in Pakistan, even to alleviate the Government's concerns of possible foreign preference. AG ¶ 11(b), "the individual has expressed a willingness to renounce dual citizenship," does not apply. AG ¶ 11(c), "exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor," is satisfied only with respect to his possession and use of his Pakistani passport.

Applicant is not required to sever all ties with a foreign country before he can be granted access to sensitive information. While he has substantial ties to the United States that would indicate a preference for the United States, there is an unmitigated risk that Applicant, his spouse, and children will again rely on their Pakistani citizenship for a benefit unavailable to U.S. citizens generally on future travel to Pakistan. The foreign preference concerns are not mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>9</sup>

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<sup>9</sup> The factors under AG ¶ 2(a) are as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

Persons in Applicant's community and work, who have benefitted from Applicant's contributions, have no concerns whatsoever about his personal integrity or his trustworthiness. Applicant testified credibly to his commitment to his life in the United States, but also to his bonds to family members in Pakistan, especially to his father. In weighing the whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

While that decision was in the context of a security clearance determination, a person seeking a position of trust must be held to similar standards of good judgment, reliability, and trustworthiness. The same adjudicative standards apply to security clearance eligibility and public trust eligibility. Applicant certainly cannot control that his family members choose to live in an area targeted by terrorists and other extremist elements, who threaten the Pakistan government, the interests of the United States, and those who cooperate and assist the United States. While Pakistan and the United States have close relationships in diplomacy and trade, the two countries sometimes have profound policy disputes, and Pakistan's government does not fully comply with the rule of law or protect civil liberties in many instances. In addition to the vulnerability risk that exists because of Applicant's relationships and contacts with close family members in Pakistan, Applicant's Pakistani citizenship could bring obligations inconsistent with his U.S. citizenship, particularly when he is in Pakistan. He clearly does not see his Pakistani citizenship as posing any significant risk in that regard. The U.S. State Department is sufficiently concerned about the security situation in Pakistan to warn its citizens against all non-essential travel. Based on all the facts and circumstances, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a position of trust at this time. This decision is not to be construed as a negative assessment of Applicant's

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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.

personal character, his honesty, or his integrity. Rather, it is an assessment of the political realities and threats involving Pakistan and Applicant's family situation.

### **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:           AGAINST APPLICANT

Subparagraphs 1.a-1.e:   Against Applicant

Paragraph 2, Guideline C:           AGAINST APPLICANT

Subparagraphs 2.a-2.b:   Against Applicant

### **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 position of public trust. Eligibility for a public trust position is denied.

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Elizabeth M. Matchinski  
Administrative Judge