



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



In the matter of: )  
)  
) ISCR Case No. 17-01673  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: Phoenix S. Ayotte, Esq.

01/09/2019

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 28, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on July 28, 2017, and requested a hearing before an administrative judge. The case was assigned to me on November 2, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 25, 2018, scheduling the hearing for June 7, 2018.

I convened the hearing as scheduled. The Government's exhibit list, discovery letter, and administrative notice request, as well as Applicant's exhibit list and memorandum were appended to the record as Hearing Exhibits (HE) I, II, III, IV, and V, respectively. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called one witness, and submitted Applicant's Exhibits (AE) A through F, which I admitted in evidence without objection. At Applicant's request, I kept the record open until June 21, 2018. Applicant did not submit additional documentation by that date. DOHA received the hearing transcript (Tr.) on June 15, 2018.<sup>1</sup>

### **Findings of Fact**

Applicant admitted all of the SOR allegations. She is a 41-year-old, native-born U.S. citizen and resident. She obtained bachelor's and master's degrees in 1999 and 2003, respectively. She is married. She has three minor children; all are native-born U.S. citizens. She and her husband have owned their home in the United States since July 2004.<sup>2</sup>

Applicant has worked for her current employer, a DOD contractor, since late 2017. She worked for previous DOD contractors since 2004. She has held a security clearance since approximately 2008.<sup>3</sup>

Applicant's husband is 44 years old. He was born in Pakistan. He immigrated to the United States on a student visa in 2001, at age 24. He and his family in Pakistan are religious minorities, and he sought to escape the turmoil in Pakistan. He does not intend to return to Pakistan to live.<sup>4</sup>

Applicant met her husband online in 2003; she married him later that year. At the time, he was in the United States in transition from a student to a work visa, and she was working full time and pursuing her master's degree. He became a naturalized U.S. citizen in 2009 and he holds a U.S. passport. His Pakistani passport expired in 2009, he has not since renewed it, and he has no intentions of doing so in the future.<sup>5</sup>

Applicant's mother-in-law died in 2011. Her father-in-law, brother-in-law, and one sister-in-law are citizens and residents of Pakistan, and her second sister-in-law is a Pakistani citizen residing in Canada. Both Applicant and her husband testified that none of the family in Pakistan is affiliated with the Pakistani government or military.

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<sup>1</sup> Tr. at 10-18, 64, 89-90.

<sup>2</sup> Applicant's response to the SOR; Tr. at 18-35, 48, 64-79; AE A.

<sup>3</sup> Tr. at 7-8, 65-79; GE 1, 2; AE B.

<sup>4</sup> Tr. at 20-89; GE 1, 2, 3.

<sup>5</sup> Tr. at 20-89; GE 1, 2, 3.

Applicant's father-in-law is 75 years old. He lives in a rental property in an affluent neighborhood that is protected by a guard. He works for a private company.<sup>6</sup>

Applicant communicates with her father-in-law telephonically once every two to three months. She described her husband's relationship with his father as a close one. Her husband talks to his father two to three times weekly. Applicant and her husband visited and stayed with her father-in-law in Pakistan for three weeks in 2006. They did a few tourist activities but primarily stayed close to her father-in-law's neighborhood. Her father-in-law kept their passports in a locked safe and made sure they were with his driver-bodyguard anytime they left his neighborhood. Applicant has not since returned to Pakistan and she does not intend to in the future, primarily because she received her security clearance but also because her father-in-law advised against it given the political climate there.<sup>7</sup>

Applicant's husband and children have since traveled to Pakistan. They travel to Pakistan every year to visit his father. They travel on their U.S. passports. As of the date of the hearing, Applicant's husband last traveled there in April 2017. He has no intention of visiting Pakistan once his father, sister, and sister's children no longer live there. For two weeks each in 2016 and 2017, Applicant's father-in-law visited and stayed with Applicant and her family in the United States. He was scheduled to revisit them in June 2018. Through the sponsorship of Applicant's husband, Applicant's father-in-law obtained a green card in 2016. He intends to move to the United States and live with Applicant and her husband once her sister-in-law is approved to immigrate to Canada, as further discussed below.<sup>8</sup>

Applicant's one sister-in-law is a Pakistani citizen residing in Pakistan. She is 41 years old. She is widowed, as her husband died in 2011, and she has two children. She is a teacher in a private elementary school. Applicant's husband sends his sister \$200 monthly, and he talks to her and her children two to three times weekly to biweekly. Applicant communicates with this sister-in-law telephonically twice yearly, primarily during the holidays, in which they discuss their children or the health of Applicant's father-in-law. Aside from meeting this sister-in-law's eldest child once, in 2006, Applicant does not have any contact with this sister-in-law's children. As of the hearing date, this sister-in-law was in the process of trying to immigrate to Canada. Applicant expected that this sister-in-law would be approved to immigrate to Canada by the end of 2019.<sup>9</sup>

Applicant's brother-in-law is 37 years old. Applicant met her brother-in-law when she visited Pakistan in 2006. Since then, their sole contact was electronically once or twice between 2007 and 2008. Applicant testified that her husband's family fell out of

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<sup>6</sup> Tr. at 20-89; GE 1, 2, 3; AE F.

<sup>7</sup> Tr. at 20-89; GE 2, 3.

<sup>8</sup> Tr. at 20-89; GE 3.

<sup>9</sup> Tr. at 20-64, 71-89; GE 3.

touch with her brother-in-law. Applicant's husband testified that his father talks to his brother once in a while. He also testified that he had not seen or heard from his brother since around 2010, stating that "we have no connection." He testified that his brother is married to a Pakistani and they have one minor child. He also testified that he was unaware what his brother did for a living and whether he intended to remain in Pakistan.<sup>10</sup>

Applicant's other sister-in-law is 38 years old. She is married and she has two minor children. This sister-in-law and her husband are Pakistani citizens residing in Canada. This sister-in-law immigrated to Canada in 2016, and she is in the process of becoming a Canadian citizen. She works in office administration, and her husband is attempting to start his own business. Since Applicant's sister-in-law moved to Canada, they talk to each other telephonically or electronically once every two to three months, primarily about their children. Prior to that, when Applicant's sister-in-law resided in Pakistan, they communicated minimally. Applicant's sister-in-law visited Applicant and her family in the United States when she received her Canadian permanent residency and again in 2017. Applicant has never met or communicated with her sister-in-law's husband.<sup>11</sup>

Applicant's assets in the United States, to include their home, total approximately \$400,000, which does not include her children's savings accounts that are held by her parents. Applicant's husband received money from his father three times: (1) his father paid for the costs associated with his move to the United States; (2) his father gave him money when he immigrated to the United States; and (3) when his father sold the family home in Pakistan in 2015, the proceeds of the sale were divided among Applicant's husband and his three siblings, and Applicant's husband's portion was \$40,000. Applicant's husband put the \$40,000 in a bank account in his name in Pakistan, and gave his father a power of attorney over the account in the event his father would need the money. If Applicant's father-in-law does not need the money before he moves to the United States, Applicant's husband intends to transfer the money to the United States. Aside from the money he sends to his sister-in-law in Pakistan, Applicant's husband also sends \$1,000 monthly to a charity in Pakistan that is run by his cousin, which supports orphan children in schools. Neither Applicant nor her husband have any other foreign financial interests.<sup>12</sup>

Applicant testified that her husband is aware that she holds a security clearance, but her foreign family members are not. She testified that neither he nor her foreign family members are aware about the specific nature of her work, as she does not discuss it with anyone. He is aware that her work is affiliated with the DOD. She testified that she has always been compliant with annual security training requirements, and she reported her 2006 trip to Pakistan in accordance with such requirements. Both she and her husband testified that they would report to the proper authorities any attempts by

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<sup>10</sup> Tr. at 20-89; GE 3.

<sup>11</sup> Tr. at 20-64, 71-89; GE 3.

<sup>12</sup> Tr. at 20-89; GE 1, 2, 3.

anyone to obtain information about her or the nature of her work. She indicated that she is loyal and bears a sense of allegiance and obligation only to the United States, and she would resolve any conflict in favor of the United States.<sup>13</sup>

Applicant's parents are native-born U.S. citizens. They are retired farmers, and her mother is also a retired registered nurse. Her father served in the U.S. military for two years. Applicant and her family are heavily involved in their community. Her children participate in Girl Scouts, and dance and swim lessons. A number of character references, to include members in her community, described her as honest and trustworthy. Her direct supervisor noted that she is the consummate professional, and that he had no reason to question her loyalty, integrity, or commitment to the United States.<sup>14</sup>

## **Pakistan**

The U.S. State Department warns U.S. citizens against all non-essential travel to Pakistan. Travel by U.S. Government personnel within Pakistan is restricted. Terrorist groups continue to pose a danger to U.S. citizens throughout Pakistan, and evidence suggests that some victims of terrorist activity were targeted because they are Americans. Although al-Qaida in Pakistan has been degraded, its global leadership continued to operate from remote locations in the region that the group has historically exploited for safe haven. Pakistan did not take substantial action against the Afghan Taliban or Haqqani Network, or substantially limit their ability to threaten U.S. interests in Afghanistan. Pakistan has also not taken sufficient action against other externally-focused groups such as Lashkar-e-Tayyiba and Jaish-e-Mohammad in 2016, which continued to operate, train, organize, and fundraise in Pakistan.

The U.S. State Department's 2016 Human Rights Report for Pakistan indicates that the most serious human rights problems in Pakistan were the following: (1) extrajudicial and targeted killings; (2) disappearances; (3) torture; (4) lack of rule of law; (5) gender inequality; and (6) sectarian violence. Other human rights problems included arbitrary detention, governmental infringement on citizens' privacy rights, a weak criminal justice system, and a lack of judicial independence. There were government restrictions on freedom of assembly and limits on freedom of movement. Government practices and certain laws limited freedom of religion, particularly for religious minorities. Corruption within the government and police, as well as discrimination against women and girls remained serious problems. Societal discrimination against national, ethnic, and racial minorities persisted, as did discrimination based on caste, sexual orientation, and gender identity.

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<sup>13</sup> Tr. at 20-35, 67-89; GE 3; AE D.

<sup>14</sup> Tr. at 35, 65-68; AE C, E.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

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

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

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

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. 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 upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant’s father-in-law, one sister-in-law, and brother-in-law are Pakistani citizens residing in Pakistan. Applicant met her brother-in-law once in 2006 in Pakistan and she last communicated with him in 2008. Applicant’s husband last communicated with his brother in 2010, and he does not have a relationship with his brother. However, both Applicant and her husband maintain close contact with Applicant’s father-in-law and sister-in-law in Pakistan, and Applicant’s father-in-law maintains contact with Applicant’s brother-in-law. As such, AG ¶¶ 7(a), 7(b), and 7(e) apply to SOR ¶¶ 1.a, 1.b, and 1.c.

AG ¶ 8 provides conditions that could mitigate security concerns. The following is potentially applicable:

(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; and

(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 in-laws are citizens and residents of Pakistan. Accordingly, AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a), 7(b), and 7(e).

While Applicant only visited her in-laws in Pakistan in 2006, her father-in-law has visited her and her family in the United States as recently as 2016 and 2017. In addition, her husband and their children have visited her father-in-law and sister-in-law in Pakistan at least once yearly since 2006. Applicant and her husband also maintain regular contact with her father-in-law and sister-in-law. AG ¶ 8(c) is not established for SOR ¶¶ 1.a and 1.b. As discussed above, however, Applicant only met her brother-in-law once in 2006 and she last communicated with him in 2008. Applicant’s husband last communicated with his brother in 2010, and he does not have a relationship with his brother. As such, AG ¶ 8(c) is established for SOR ¶ 1.c.



Applicant is a native-born U.S. citizen. She has lived in the United States her entire life. She obtained her education in the United States. She has worked for various DOD contractors since 2004. Her assets in the United States total approximately \$400,000. While her husband has \$40,000 in a bank account in Pakistan, and sends money to his sister as well as a charity owned by his cousin in Pakistan, they do not have any other foreign financial interests or any expectation of inheriting any such interests. He plans on transferring the \$40,000 to the United States once his father moves to the United States, and his sister is in the process of moving to Canada. AG ¶ 8(b) is established.

### **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 relevant 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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have incorporated my comments under Guideline B in my whole-person analysis. After weighing the disqualifying and mitigating conditions under this guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence security concerns. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **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 – 1.c:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge