



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



In the matter of:)
)
) ISCR Case No. 17-01985
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Jeffrey D. Billett, Esq.

04/04/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s spouse is a citizen and resident of Pakistan, and he has frequent contact with her. Applicant is unable to meet her in Pakistan because he is worried about his personal safety. She has never been to the United States. Applicant failed to disclose his marriage to the Pakistani citizen during his September 30, 2013 counterintelligence interview. Foreign influence and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On April 26, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On June 28, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, established 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. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of the national interest to grant or continue a security clearance for Applicant 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 Guidelines B (foreign influence) and E (personal conduct).

On September 6, 2017, Applicant responded to the SOR. (HE 3) The Government requested a hearing. (Transcript (Tr.) 7; file) On April 18, 2018, Department Counsel was ready to proceed. On April 18, 2018, the case was assigned to another administrative judge, and on October 16, 2018, the case was transferred to me. On November 7, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for January 23, 2019. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits, and Applicant offered eight exhibits. (Transcript (Tr.) 22-29; GE 1-6; Applicant Exhibit (AE) A-H). Applicant objected to the admissibility of GE 2-6 because there was no authenticating witness for the counterintelligence or security-related investigative documents. (Tr. 23-24) I deferred ruling on the admissibility of GE 2-6. (Tr. 25) After voir dire of Applicant concerning the documents, Applicant posed no objection to them, and they were admitted into evidence. (Tr. 85-96) All other proffered exhibits were also admitted into evidence. (Tr. 25, 29-30, 84) On January 31, 2019, DOHA received a transcript of the hearing. The record was held open until February 22, 2019, and Applicant provided two additional documents, which were admitted without objection. (Tr. 182-183; AE I; AE J)

Procedural Rulings

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Pakistan and Afghanistan. (Tr. 18-19; GE 7-8) Applicant requested administrative notice concerning additional information about the positive relationship between the United States and Pakistan. (Tr. 12-13; AE A) There were no objections to me taking administrative notice of facts concerning these two countries, and all requests for administrative notice were granted. (Tr. 13-14; AE A; GE 7-8) Department Counsel's request for discovery was also admitted. (Tr. 23; GE 9)

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). Portions of the administrative notice requests are quoted without quotation marks and footnotes. I have also taken administrative notice of basic facts about the history, geography, population, and diplomatic relationship between the United States and

Afghanistan from the U.S. State Department Background Note for Afghanistan (Nov. 28, 2011), <https://2009-2017.state.gov/outofdate/bgn/afghanistan/191350.htm>. (HE 4)

Department Counsel moved to withdraw SOR ¶ 2.b. (Tr. 10) Applicant concurred with withdrawal of SOR ¶ 2.b, and I granted the motion. (Tr. 11)

Department Counsel moved to amend the SOR to add ¶¶ 1.d and 1.e to allege that Applicant's two stepchildren are citizens and residents of Pakistan (¶ 1.d), and Applicant had a relationship with an Afghan government official (AGO) (¶ 1.e). Applicant said he was from the same city as AGO, and he met AGO as part of his linguist duties. (Tr. 151) He frequently communicated with AGO while he was working as a linguist and on his own initiative. He denied that AGO was his friend, and he said he has not communicated with AGO for about one year. (Tr. 151-152) Applicant did not tell AGO about his family that may have been living in Afghanistan. (Tr. 153-154) He did not trust AGO with personal information about his family because Applicant was concerned that AGO might use pressure or extortion against Applicant. (Tr. 154) Applicant's counsel opposed the motion to amend the SOR, and I denied the motion. (Tr. 145-157)

In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

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

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's relationships with his stepchildren living in Pakistan will be considered for the five purposes listed above. His relationship with AGO will not be considered because he has not contacted AGO for at least one year, and this relationship was not sufficiently close to raise a security concern.

Findings of Fact¹

Applicant admitted all of the SOR allegations. (HE 3) His admissions are incorporated herein as findings of fact. He also provided extenuating and mitigating information. (HE 3) 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 51 years old, and he is seeking employment in Afghanistan as a CAT II linguist. (Tr. 31) He returned to Afghanistan shortly after his hearing to continue his duties as a CAT I linguist (no security clearance) supporting U.S. Forces.

Applicant was born in Afghanistan. (Tr. 31) The Russian soldiers occupying Afghanistan at that time abused him and his family. (Tr. 34) He received a high school diploma in Afghanistan. (GE 6) He immigrated to the United States in 1995. (Tr. 31) In 1997, he became a U.S. resident alien. (Tr. 39) He was married to a U.S. citizen from 1997 to 2000, and he obtained U.S. citizenship through this marriage; however, he said he did not commit immigration fraud. (Tr. 40-41, 88) In 2005, he became a U.S. citizen. (GE 1)

For about 14 years, Applicant worked in the fast-food industry in the United States, and he was promoted to regional director of a large fast-food franchise. (Tr. 38, 111-11) He believed his employer violated an agreement² and did not pay him sufficiently, and left that employment and became a linguist. (Tr. 38)

In 2009, Applicant began working as a linguist in Afghanistan. (Tr. 36) He was repeatedly exposed to combat conditions including small arms fires, indirect weapons fires, improvised explosive devices (IED) and rocket-propelled grenades (RPG). (Tr. 42) Soldiers were killed in operations in close proximity to him. (Tr. 43) On one occasion his vehicle was hit with an IED and turned over. (Tr. 44) Applicant has experienced problems with his sleep and memory, and he attributes his medical problems, in part, to his service in Afghanistan. (Tr. 45) As recently as 2018, he was on patrols that accomplished the death of Taliban military personnel. (Tr. 47)

Foreign Influence

The SOR alleges under Guideline B that Applicant's spouse is a citizen and resident of Pakistan (¶ 1.a); and his mother and brother are citizens and residents of Afghanistan (¶¶ 1.b and 1.c).

Around 1999, the Taliban killed Applicant's father. (Tr. 35-36, 59, 138-139) Around 2001, the Taliban killed his sister. (Tr. 36, 138-139) Applicant's mother was a housewife, and he has not heard from his mother since about 1998 or 1999. (Tr. 58, 61, 146) He does not know if his mother is alive or dead. (Tr. 58) He does not know where his mother lives. (Tr. 59) His brother was a farmer, and his most recent contact with his brother was in 1995. (Tr. 60-61) He does not know where his brother currently resides.

² The SOR did not allege that Applicant was addicted to gambling, or that he stole about \$50,000 from his fast-food employer. (Tr. 113-123) He said in an interview that in 2013, he was addicted to gambling, and he lost about \$200,000 gambling. (Tr. 122-126; GE 6) His fast-food employer claimed \$50,000 was missing, and Applicant was responsible for the loss. (Tr. 114-122; GE 6) Applicant told his employer that his employer could deduct the loss from the \$200,000 debt his employer owed him. (Tr. 114) Applicant said if his girlfriend stole the missing funds, he would take responsibility for the loss. (Tr. 116) He denied responsibility for the loss of \$50,000. (Tr. 157) No adverse inference is drawn against Applicant for having a gambling addiction or the missing \$50,000 because the record of this conduct is not sufficiently developed to establish whether he currently has a gambling addiction or that he stole from his fast-food employer.

(Tr. 60) His mother and brother did not have any connections, such as employment, with the Afghan government. (Tr. 62)

In March 2013, Applicant married his wife, and then she went to Afghanistan and met with Applicant. (Tr. 63, 65, 96, 142) She is 49 years old. (Tr. 140) In 2013, he spent about two weeks with his spouse. (Tr. 65, 96) He most recently met with his spouse in 2014. (Tr. 65) She resides in Pakistan. (Tr. 76) He communicates with his spouse using Skype. (Tr. 66) His spouse has an 8th grade-level education, and she lived with her brother until he died. (Tr. 66) His spouse has two children who are ages 23 and 24, and Applicant provides financial support to her, and she uses the funds to support his stepchildren. (Tr. 67-68, 143) In 2018, he provided about \$6,500 in support to her. (Tr. 161)

Applicant applied to the U.S. Citizenship and Immigration Services (USCIS) two or three times in the last several years for his spouse to immigrate to the United States; however, each time “pictures were lost or something.” (Tr. 98) Applicant acknowledged that he has not provided all of the necessary paperwork to the USCIS for the USCIS to approve her residence in the United States; however, he contended that he is close to obtaining approval of his spouse’s immigration to the United States. (Tr. 67, 69, 99) For example, he has not completed the required affidavit of support. (Tr. 99-100) For about 9 months or maybe 18 months, he was focused on his own medical problems and not on the INS’ requirements for his spouse’s immigration. (Tr. 100-103, 141) However, she may have wanted to delay her move to the United States. (Tr. 67, 69) He expects she will move to the United States within one year. (Tr. 68) She has never been to the United States. (Tr. 76) He communicates with her about twice a week. (Tr. 141; GE 5 at 1)

Applicant could not go to Pakistan to see his spouse because he was well known in Pakistan due to his work as a linguist, and “it was very risky for [him] to go there . . . [it] would be very risky for [his] life.” (Tr. 141) The only time he met his wife in person after their marriage was in a third country (not Pakistan or the United States) in 2014. (Tr. 141-142)

In 2015, Applicant’s spouse’s brother was killed by the Taliban. (Tr. 140, 162) Applicant’s spouse and his stepchildren live in the house that was once owed by her brother. (Tr. 162) Applicant’s stepchildren now own the home in Pakistan that they inherited from Applicant’s spouse’s brother. (Tr. 162)

Applicant has some bank accounts in the United States with about \$15,000 in them; however, he does not own any real estate in the United States. (Tr. 77) He owns a car and rents an apartment in the United States. (Tr. 78) He was unsure of the status of some land his father owned in Afghanistan, and he does not own any property in Pakistan. (Tr. 79) Applicant renounced his Afghan citizenship. (Tr. 163) Applicant does not have any relatives that live in the United States. (Tr. 163)

Personal Conduct

The SOR alleges under Guideline E that Applicant was terminated from employment as a government contractor in April 2013 for job abandonment (¶ 2.a);

Applicant failed to disclose that he did not provide financial support to his second spouse on his April 26, 2016 SCA (§ 2.c); and Applicant failed to disclose that he was married to his second spouse, a citizen and resident of Pakistan, during a counterintelligence interview on September 13, 2013 (§ 2.d).

In April 2013, Applicant was on leave from Afghanistan in the United States. (Tr. 49-50) An investigator was interviewing him, and he missed his flight back to Afghanistan. (Tr. 50, 105-106) He called his employer about missing his flight, and was informed that he needed to report to Afghanistan as scheduled. (Tr. 50-52) He told his employer he could not report on time. (Tr. 52) He waited for a follow-up response from his employer for one week, and then he was informed he was terminated for not reporting on time to Afghanistan. (Tr. 52) In September 2013, he applied for employment with the same employer, and in January 2014, he returned to Afghanistan, and he was employed by the same employer that fired him in April 2013. (Tr. 53-55) After eight months working as a linguist with the U.S. Marines in Afghanistan, the Marines and Applicant returned to the United States as part of the drawdown in U.S. Forces in Afghanistan. (Tr. 55)

A copy of Applicant's 2013 SCA is not part of the record. The summary of Applicant's September 30, 2013 counterintelligence interview and a chart of relatives do not contain any information about his spouse or stepchildren in Pakistan. (Tr. 128; GE 2; GE 3) His 2013 counterintelligence summary of interview indicates he disclosed that he resides with his "ex-girlfriend" and her children, and he provides financial support to her and her children. (GE 2 at 13) He said his ex-girlfriend and best friend is a U.S. citizen. (GE 3) He also discussed his marriage from his previous spouse in 2001, and he provided information about her U.S. citizenship. (GE 2 at 13; GE 3) In sum, the only information disclosed during his 2013 counterintelligence interview related to his relationships with a girlfriend and former spouse, and both of these women were U.S. citizens. He did not disclose his marriage to a citizen and resident of Pakistan.

In his April 26, 2016 SCA, Applicant disclosed that he married his second spouse in July 2013, and she lived in Pakistan. (Tr. 74; GE 1) On his April 26, 2016 SCA he did not disclose that he had two stepchildren as a result of his second marriage, and he said he did not provide any financial support to a foreign national. (SOR § 2.c; GE 1) During his May 2, 2016 counterintelligence interview, he said that he did not disclose his March 2013 marriage to his second spouse on his previous SCA and counterintelligence interview because he was worried about how it would look to be married to a Pakistani woman while working for U.S. Forces in Afghanistan. (Tr. 131-132; GE 4 at 9 (Item 35)) He disclosed his two stepchildren during his May 2, 2016 counterintelligence interview. *Id.*

Applicant's April 26, 2016 SCA asked Applicant whether he ever provided financial support for any foreign national, and he responded, no. (Tr. 69; GE 1) He said he misinterpreted the question, as he believed it pertained to support of individuals other than his spouse. (Tr. 71, 135) In June 2016, an Office of Personnel Management investigator interviewed Applicant, and he disclosed that he provided \$500 to \$1,000 monthly to his spouse. (Tr. 133-134)

Applicant said that during his 2013 counterintelligence interview, he did not disclose his marriage to his spouse because he “was never asked any questions [about his spouse], and it totally went out of [his] mind that [he] should put his wife at that time.” (Tr. 73) He said he was unsure about what he was thinking when he was interviewed. (Tr. 165) He conceded he “made a mistake.” (Tr. 74)

Character Evidence

Applicant worked for an employer providing overseas linguists from October 2009 to May 2013, from January 2014 to November 2014, and from September 2017 to present. (Tr. 57; AE G) He received some unit coins from commanders for his contributions to mission accomplishment. (Tr. 83; AE H)

In 2010, a first sergeant noted that Applicant “placed himself in personal danger countless times.” (AE C) He is an “invaluable force multiplier” and will be an asset to military units in the future. (AE C) The Army infantry unit suffered numerous casualties including 22 killed in action, and Applicant was present during dangerous combat operations, and he risked his life on a daily basis. (AE C) He received a certificate of appreciation for his exceptional contributions to mission accomplishment, diligence, and “can-do attitude” in 2009 and 2010. (AE F)

In 2012, Applicant received a National Guard Commendation Medal approved by the Governor of a state. (AE I; file) He also received an excellent rating for his contributions to an Army unit as a linguist in Afghanistan. (AE I) An Army brigade commander indicated in his performance evaluation:

[Applicant] is a tremendous interpreter, one of the best with whom I have served. His performance as the interpreter of a forward deployed multinational brigade in combat has been simply superb. He is a dynamic individual who uses initiative and boundless energy to improve the operational effectiveness of all units within the command and the Soldiers in them through his interaction with . . . leaders.

He is a dedicated professional with an extremely positive attitude and a keen ability to form cohesive teams in an international environment. [Applicant] is able to interact with ease to any Pashto or Dari speaking individual - a trait essential to relationship building in [this area].

[Applicant] is a confident individual who understands operational and strategic imperatives as he circulates in [this] battle space. During his tenure as the Commander’s Interpreter for [this] Combined Team . . . , his personal influence on Afghan interaction has enabled the team to drastically improve the stability, security, governance and development capabilities in [this area]. (AE I)

Applicant received multiple certificates of appreciation and letters of support from a linguist, a captain, a major, a sergeant first class, and his employer for his contributions to an armed counterintelligence screening team. (AE B; AE D; AE E; file) One certificate

of appreciation praised him for his professionalism, “calm demeanor and smooth talking ability.” (AE B) He is one of the most effective and dedicated linguists supporting the team. (AE B) The contractor lauded his exceptional ability as a translator as well as his trustworthiness, efficiency, reliability, and diligence. (AE D) He also received an excellent Soldier Performance Appraisal Report form service from November 1, 2010, to January 2, 2011. (file)

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 million Afghans living outside Afghanistan, mainly in Pakistan and Iran, although over 5 million have returned since the removal of the Taliban regime.

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, 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 IEDs. 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 terrorist networks and members of other armed opposition groups are active throughout the country and remain violently opposed to the Afghan government and Coalition Forces. These terrorist groups have attacked Afghan, Coalition Forces, and U.S. targets with little regard for or the express intent to cause civilian casualties.

According to the June 2017 U.S. Department of Defense report on Afghanistan, Afghanistan faces a continuing threat from insurgent and terrorist networks present or operating in the Afghanistan-Pakistan region. Department Counsel's administrative notice lists recent terrorist attacks in Afghanistan resulting in the deaths of hundreds of civilians and military personnel in 2017 and 2018.

In December 2016, the Department of Defense reported to Congress that, although al-Qaeda'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 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.

Pakistan

Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States and an international coalition in Operation Enduring Freedom to remove the Taliban from power in Afghanistan. The United States and Pakistan have common interests in a peaceful, stable, and prosperous region. Despite this support, members of the Taliban and several terrorist groups are known to operate in several "safe havens" in Pakistan.

Pakistan has numerous human rights issues including extrajudicial and targeted killings, disappearances, torture, violations of the rule of law, mob violence, and limited accountability. Government restrictions, corruption, and a culture of impunity are serious problems in Pakistan. Lack of accountability for violations of the law and human rights abuses are common.

Some terrorist groups have had success raising funds in Pakistan. Taliban financing has been traced from Pakistan to Afghanistan, enabling the insurgency in Afghanistan to strengthen its military and technical capabilities. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. Although al-Qaeda in Pakistan has been seriously degraded, terrorist groups continue to operate in Pakistan. Attacks have resulted in hundreds of casualties.

The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Terrorists have attacked numerous locations throughout Pakistan.

Pakistan and the United States are allies in counterterrorism. Pakistan is committed to elimination of terrorist camps on the Afghanistan-Pakistan border and sent thousands of troops and sustained hundreds of casualties in this effort. Overall, Pakistan has intensified counterinsurgency efforts and demonstrated determination and persistence in combating militants. The United States is engaging in a substantial effort to bolster Pakistan's military forces and security.

President Obama said that Pakistan is an essential partner of the United States in South Asia, and he committed to the shared security and prosperity between these two great democracies. The United States is Pakistan's largest trading partner. In 2013, the United States invested more than \$2 billion in Pakistan. United States investments in the energy, research and development, and education sectors are particularly significant. In 2013, the United States and Pakistan committed to strengthening relationships between the two countries. President Obama said that Pakistan Americans living in the United States "are enormous contributors to the growth and development of the United States." The United States has increased investment in the U.S. Embassy in Islamabad, and this included hiring additional personnel and construction of a new embassy.

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 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; and
- (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.

Applicant admitted that his spouse is a citizen and resident of Pakistan; and his mother and brother were and possibly are citizens and residents of Afghanistan. He has frequent contacts with his spouse, but not with his mother and brother. His frequent contacts with his spouse in Pakistan are a manifestation of his care and concern for her. The focus of the discussion must be on his family in Pakistan, and not on his family in Afghanistan because he has not had contact with his family in Afghanistan for more than 20 years.

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)). "The presence of close relatives in a country in which terrorists operate and/or which has a poor human rights record is significant in Guideline B cases." ISCR Case No. 11-06925 (App. Bd. Dec. 13, 2013) at 4 (discussing denial of access to classified information because of relatives in Pakistan). "Factors such as the obscurity of foreign relatives or the failure of foreign persons to contact those relatives do not provide a meaningful measure of whether an applicant's circumstances pose a security risk." *Id.*

There are widely documented safety issues for residents of Pakistan primarily because of terrorists and criminals. Applicant has voluntarily shared in dangers from terrorists on behalf of the DOD when he was deployed to Afghanistan as a linguist for a DOD contractor, and he is willing to do so in the future. Numerous linguists, supporting U.S. forces, have family living in countries that have problems with terrorists and criminals. Thousands of United States and coalition armed forces and civilian contractors that have served in the Middle East, Afghanistan, Iraq, and Pakistan have been and are targets of terrorists, along with their families, located in those countries.

The mere possession of close family ties with relatives living in Pakistan 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).

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 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 (App. Bd. May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). 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 Pakistan and Afghanistan with the United States, and the situations in those countries places a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member living in or visiting those countries 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 Pakistan or Afghanistan.³

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

³ 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.

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 Pakistan or 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 Pakistan and Afghanistan have a significant problem with terrorism and crime. Applicant’s family in Pakistan “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 relationship with his wife who is a citizen and resident of Pakistan creates a potential conflict of interest because terrorists could place pressure on her in an effort to cause Applicant to compromise classified information. This relationship creates “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Her citizenship and residence in Pakistan, and Applicant’s relationship with her, has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists 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).

Applicant has not had any contact with his brother since 1995 and his mother since 1998 or 1999. He does not know if they are alive or dead. Assuming one or both of them are alive, he does not know if they still live in Afghanistan or have moved to another country. SOR ¶¶ 1.b and 1.c are mitigated under AG ¶¶ 8(a) and 8(c). Foreign influence security concerns relating to his mother and brother will not be further discussed in this opinion.

AG ¶ 8(b) partially applies to his relationships with his spouse and stepchildren living in Pakistan. Applicant has frequent contacts with and provides financial support to his spouse and stepchildren, who are citizens and residents of Pakistan.⁴ 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 from 1995 to present, except for his

⁴ See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in PRC "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); 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).

deployments to Afghanistan and some brief trips to other countries.⁵ In 2005, Applicant became a U.S. citizen. He is renting his residence and has bank accounts in the United States. He honorably served as a linguist in Afghanistan.

Applicant's support to the DOD in Afghanistan, including the dangers that service entailed, weighs heavily towards mitigating security concerns. Applicant seeks a security clearance to enable him to continue serving the Middle East providing assistance to DOD. He has shown his patriotism, loyalty, and fidelity to the United States during his 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 and service in Afghanistan must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Pakistan. Applicant has close relationships with family in Pakistan, and they are at risk from criminals, terrorists, and human rights violations of those countries' governments.

It is important to be mindful of the United States' historical investment of manpower and money in Pakistan and Afghanistan, and Applicant has supported U.S. goals and objectives in those countries. Applicant, through his family living in Pakistan,

⁵ 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).

is a potential target of terrorists, and Applicant's potential access to classified information could theoretically add risk to his relatives living in Pakistan.

Applicant said his support to the United States is well known in Pakistan. He is unable to travel to Pakistan to visit his family because he will be subject to risk of injury or death from terrorists and criminals.

In sum, Applicant's connections to his relatives living in Pakistan are too significant to mitigate in the circumstances Applicant presented. His connections to the United States taken together are not sufficient to overcome the foreign influence security concerns under Guideline B.

Personal Conduct

AG ¶ 15 articulates the security concern for personal conduct:

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

AG ¶ 19 includes disqualifying condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant failed to disclose that he did not provide financial support to his spouse on his April 26, 2016 SCA, as alleged in SOR ¶ 2.c. This mistake was not intentional and was not made with intent to deceive. He disclosed the existence of his spouse in

Pakistan on his April 26, 2016 SCA. It was reasonable to assume that he was providing financial support to her, and his failure to disclose such financial support was an unintentional error. See also AG ¶ 20(f), *infra*.

Applicant presented extenuating information relating to his termination from employment as a government contractor in April 2013 for job abandonment. He missed his flight due to needing to complete a security-related interview. He showed poor judgment when he failed to take the next available flight to report for duty. However, this poor judgment did not recur, is not recent, and his employer rehired him. The record does not establish AG ¶ 19(e) because his termination from employment did not create a vulnerability to exploitation, manipulation, or duress, as alleged in SOR ¶ 2.a.

AG ¶ 19(b) is established because he intentionally failed to disclose information about his marriage to his spouse, who was a citizen and resident of Pakistan, as alleged in SOR ¶ 2.d. Consideration of mitigating conditions is required.

AG ¶ 20 lists six conditions that could mitigate foreign influence security concerns including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant failed to disclose that he was married to his spouse a citizen and resident of Pakistan during his counterintelligence interview on September 13, 2013. During his May 2, 2016 counterintelligence interview, he said that he did not disclose his March 2013 marriage on his counterintelligence interview because he was worried about how it would look to be married to a Pakistan woman while working for U.S. Forces in Afghanistan. His omission of information about his marriage to a citizen and resident of Pakistan during his 2013 counterintelligence interview was intentional. His claim at his hearing that the investigator did not ask him about his marriage is not credible. AG ¶ 2.d is not mitigated. Personal conduct security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

Applicant is 51 years old, and he is seeking employment in Afghanistan as a CAT II linguist in Afghanistan. He was born in Afghanistan, and in 1995, he immigrated to the United States. In 2005, he became a U.S. citizen.

Applicant worked for several years in Afghanistan as a linguist. He was repeatedly exposed to combat conditions including small arms fires, indirect weapons fires, IEDs, and RPGs. Soldiers in his vicinity were killed in combat. On one occasion, his vehicle was hit with an IED and turned over. Applicant has experienced problems with his sleep and memory, and he attributes his medical problems in part, to his service in Afghanistan. As recently as 2018, he was on patrols involving the death of Taliban military personnel. Applicant's employer and Soldiers that served with Applicant in Afghanistan lauded his diligence, professionalism, intelligence, and contributions to mission accomplishment in an evaluation, letters, statements, certificates, and a medal.

Connections to foreign countries must be balanced against connections to the United States. Applicant resided in the United States from 1995 to present, except for several years when he was serving in Afghanistan as a linguist and brief visits to other countries. He is renting an apartment in the United States, and he has bank accounts in the United States. He took the oath of allegiance to the United States when he became a U.S. citizen. He does not have any relatives that live in the United States.

Applicant served U.S. interests as a linguist in Afghanistan. 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 in Afghanistan weighs heavily towards mitigation 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 must take into consideration the geopolitical situation and dangers of the country involved.⁶ Pakistan is a dangerous place due to violence from terrorists and criminals, and Pakistan’s government does not respect the full spectrum of human rights. Terrorists continue to threaten Pakistani citizens and residents, the Pakistan government, the interests of the United States, and those who cooperate and assist the United States. The United States and Pakistan are democracies, allies in the war on terrorism, and trading partners. They have numerous important common interests.

Applicant has frequent contact with or cares for his wife and stepchildren, who are citizens and residents of Pakistan. They have never been to the United States. He provides financial support to his spouse and stepchildren. Applicant is well known in Pakistan, and he believes he cannot safely visit his family in Pakistan. Frequent contacts with and financial support for family in foreign countries are manifestations of one’s care and concern for relatives living in those foreign countries. There is no evidence that his relatives are current employees of foreign governments or foreign military personnel. His relationships with residents and citizens of Pakistan raise important foreign influence security concerns.

Applicant intentionally omitted information about his spouse in Pakistan during his counterintelligence interview in 2013. He told the truth in his 2016 counterintelligence interview when he admitted this omission was designed to conceal his relationship with his spouse because of its security or employment ramifications. At his hearing, he falsely claimed that in 2013, the counterintelligence investigator did not ask him about his marriage.

⁶ 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).

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 and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Paragraph 2, Guideline E:	Against APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Withdrawn
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	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 security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge