



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



In the matter of: )  
)  
) ISCR Case No. 17-02374  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brian Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

07/17/2019

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The Statement of Reasons (SOR) alleges Applicant’s son, stepmother and half-siblings are citizens and residents of Pakistan. In 2008 and 2016, he was convicted of Driving Under the Influence (DUI). Applicant has mitigated the foreign influence, alcohol consumption, and criminal conduct security concerns. Clearance is granted.

**Statement of the Case**

On October 2, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline B, foreign influence, Guideline G, alcohol consumption, and Guideline J, criminal conduct, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him.

The DoD CAF took the action under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

On October 30, 2017, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On November 26, 2018, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on December 11, 2018.

Six Government exhibits (Ex. 1 – 6) and seven Applicant exhibits (Ex. A – G) were admitted into evidence without objection. Documents submitted by Applicant as attachments to his SOR answer were also considered. Applicant testified, as reflected in a transcript (Tr.) received on January 2, 2019.

### **Administrative Notice**

Department Counsel requested that administrative notice be taken of certain facts about Pakistan and United Arab Emirates (UAE). Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. The material was admitted as Hearing Exhibit (HE) A and B. I have also taken administrative notice of facts about Egypt from the U.S. Department of State website. These facts come from source material published by the Department of State and Department of Justice. The facts are limited to matters of general knowledge and not subject to reasonable dispute.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations and stated he had not had contact with his stepmother or half-siblings in the past four years. He explained the 2016 DUI was contributed to by the pain and sorrow over his ex-wife's death.

Applicant is a 64-year-old linguist who is being sponsored by a defense contractor. He started working for the contractor in 2014. (Tr. 11, 21) However, until his clearance is adjudicated, he is working full-time for a military exchange store and has a second job working for a discount variety store. (Tr. 21) In December 2017, he submitted his expired Pakistani passport to his defense contractor employer to be destroyed. (Ex. E) In 2011, he worked as a linguist for the U.S. Air Force in Qatar. (Tr. 21) The record is silent as to his duty performance while employed as a linguist.

Applicant was born in Pakistan and left in 1980, after graduating from university. (Tr. 25) He then worked for 20 years in the UAE. (Tr. 12) In 2000, he moved to the United States. He became a naturalized U.S. citizen in September 2008. (Tr. 24) In 2000, he married and helped raise his wife's three children and four grandchildren. In 2010, they separated when one of the grandchildren, an illegal drug user, threatened to kill Applicant. (Ex. 5, Tr. 36) His wife chose to stay with her grandchildren, and she moved with them out of state. Applicant and his wife subsequently reconciled and she returned before her first of three heart attacks. (Tr. 36) She died of the final heart attack.

Applicant has one son who is a citizen and resident of Pakistan, but is in the process of becoming a naturalized U.S. citizen and moving to the United States. In September 2012, the I-130 Immigrant Petition for Relative was approved for his son. (Ex. A) His son was scheduled to arrive in the United States in March 2018, but delays in processing by the U.S. Citizenship and Immigration Service (CIS) have slowed the date of his son's arrival. At the time of the December 2018 hearing, Applicant had been told the CIS was, processing individuals who should have arrived in March 2018.

Applicant expected his son, barring additional delays, to arrive in the United States within the month following the hearing. The immigration process would have been quicker, but an immigration letter had been sent to, but not received by Applicant. Non receipt of the letter slowed the process. Applicant's son is likely to immigrate to the United States based, in part, on the history of Applicant's other two children, both of whom are living in the United States. His daughter is a naturalized U.S. citizen, a grandmother, and housewife. His son living in the United States is a permanent U.S. resident who recently was informed he is now eligible to apply to become a naturalized U.S. citizen. (Tr. 40). This son works at a convenience store. (Tr. 41)

Applicant's mother died when Applicant was a year-and-a-half old. He was raised by his grandmother until her death when he was five or six. (Tr. 28) He was then raised by his uncle. (Tr. 25) His father remarried and lived 500 miles away from Applicant. Applicant was 17 or 18 years old and had graduated from high school when he met his father. (Tr. 28) After high school graduation, Applicant visited his father and his father's new family for two days. (Tr. 30) His father married a woman who owned some land and lived off the income from the land. Applicant does not remember his father ever having a job. (Tr. 30)

Applicant has a half-brother who is a resident of the UAE, a half-sister who was a resident of Oman, but has moved back to Pakistan, and four half-brothers and three half-sisters who are residents of Pakistan. (Ex. 4, Tr. 48) To the best of his knowledge, none of his half-siblings or any other relatives are affiliated in any way with a foreign government or military. (Ex. 5)

During Applicant's his two-day visit, when he was 17 or 18, he asked his father why his half-siblings were not pursuing their educations. (Tr. 31) His father said he was doing the best he could. His half-siblings' education ended at the seventh or eighth grade level. (Tr. 21) Applicant does not know all of his half-siblings' employment, but knows that some of them are not working and the majority are farmers. (Ex. 5, Tr. 31) He saw his step-sibling and stepmother in 2005 and in 2010 or 2011 when he visited his father in the hospital. He last saw his half-siblings in 2013 when he cared for his father prior to and while his father was again in the hospital. (Ex. 4, Ex. 5, Tr. 13, 46, 51, 78) Applicant has no written communication with his half-siblings or stepmother and does not send them greeting or holiday cards. (Tr. 47)

Applicant did not return to Pakistan in 2015 when his father died, having been advised against doing so by his company. (Tr. 51, 52) Additionally, he did not learn of his

father's death in time for him to arrive for the funeral. (Tr. 52) He has little information as to the full names and occupations of these individuals. (Tr. 13)

Applicant once owned property worth \$7,500 in Pakistan that he inherited from his mother. (Ex. 4) He no longer owns that property, having transferred it to his half-sister in 2011. (Tr. 45) Additionally, Applicant has no bank accounts, property, investments or any other financial interest in Pakistan or in any foreign country. (Ex. 5, Tr. 45)

In 2008, Applicant was convicted of Open Container and DUI. He accepted the charges and paid a \$700 fine even though the partial bottle of wine had been left in his car by another person. (Tr. 55) Applicant asserted he does not drink wine, but drinks beer. (Tr. 54) There was no blood alcohol test at the time of his arrest. (Tr. 57) In a March 2015 Enhanced Subject Interview (Ex. 5), he said he had been given the option of paying a \$300 fine or fighting the charge. Applicant admitted he had been drinking alcohol before being stopped, but denies he was intoxicated. (Ex. 5)

In January 2016, Applicant was again arrested for DUI (misdemeanor). (Ex. F, Tr. 64) He asserted it was raining, and he was driving to the store to get cigarettes when a dog ran out onto the road. (Tr. 60) He hit his brakes to avoid the dog, and his vehicle skidded, hitting a traffic sign, and drifted across the frozen grass into the ditch. (Ex. D) A breath test registered a blood alcohol content (BAC) of .123. (Ex. E, Ex. 6) He believes that going to get those cigarettes cost him \$6,000. (Ex. 5, Tr. 71) He said he had been drinking because he was missing his wife who had died a few months earlier. (Tr. 61)

Applicant received a deferred sentence and was placed on probation for 18 months. His probation ended in November 2017. In August 2016, he completed the Victims' Impact Panel, and in September 2016, he completed a 24-hour DUI Offender Assessment course during which he learned not to drive after having one drink. (Ex. G, Tr. 68) The class was offered for one or two hours per session over a number of days. (Tr. 69) On November 1, 2017, all the conditions of the deferred judgment and sentence had been satisfied, and all fines, cost, and all assessment had been paid as ordered. (Ex. B) The court found Applicant should be discharged without a court judgment of guilt, and the plea of guilty or *nolo contendere* was expunged from the record and the charge dismissed. An Order Withdrawing, Dismissing, and Expunging Plea was entered. (Ex. B)

Applicant last drank in January 2016, at the time of his arrest. (Tr. 70) He no longer drinks alcohol and does not intend to consume alcohol in the future. (Ex. 5) He also refrains from going to parties where alcohol is likely to be present. (Tr. 70)

## **Pakistan**

Pakistan is a parliamentary Islamic republic with significant internal problems caused by terrorist organizations concentrated in several locations within the country. A U.S. State Department Travel Warning for Pakistan remains in effect. The State Department warns that U.S. citizens not travel to Pakistan due to terrorism. Since 2014, parts of Pakistan's Federally Administered Tribal Areas, Khyber Pakhtunkhwa province, and Baluchistan province were regarded as safe havens for terrorist groups, including al-

Qaida, the Haqqani Network, Taliban Pakistan, Lashkar e-Tayyiba, Jaish-e-Mohammad, and the Afghan Taliban. These groups create ongoing security problems by targeting western interests, U.S. citizens, senior Pakistani officials, minority political groups, and religious entities. In September 2012, the United States officially declared the Haqqani Network a foreign terrorist organization. Operations since 2014 by the Pakistani military against some of the terror groups have met with only marginal success. There have been numerous terrorist attacks throughout Pakistan with large number of casualties. (HE A)

The human rights record of Pakistan is not good. Extrajudicial killings, torture, and disappearances have been reported, along with intrusive government surveillance of politicians, political activists, and the media. Government and police corruption, sexual harassment, and gender discrimination are persistent problems. Although, Applicant has not lived in the UAE for 19 years, the submitted material on the UAE was reviewed. (HE B) It is noted that terrorist concerns and human rights abuses in the UAE are not as significant as in Pakistan.

### **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 must be considered 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, these guidelines are applied 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 adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." 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 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

The foreign influence concern is set forth at AG ¶ 6, as follows:

Foreign contacts and interests, including, but not limited to, business, financial interests, and property interest, 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 that is 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 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 nature of a country’s government, its relationship to the United States, and its human rights record, are relevant in evaluating the chances that an applicant’s family members are vulnerable to government pressure or influence. As the guideline indicates, the country in question must be considered. Terrorist organizations, including the Taliban and al-Qaeda, continue to operate against the United States and Pakistani interests within Pakistan. The country has a poor human rights record that is aggravated and exacerbated by the country’s terrorism and violence.

The potentially conflicting loyalties raised by foreign contacts must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. There is no evidence that the Pakistani government targets U.S. citizens for protected information. Human rights issues in the Pakistan continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant’s vulnerability to pressure or coercion because of his son, half-siblings and step mother live in Pakistan.

When evaluating an applicant's ties to foreign family members, the totality of an applicant's foreign family ties as well as each individual family tie must be considered. AG ¶ 7 describes two conditions that could raise a security concern and may be disqualifying:

(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.

An applicant's contacts and ties to family members who are citizens of a foreign country to not automatically disqualify an applicant from security clearance access. The AG ¶ 7(a) contacts are only disqualifying if they create a heightened risk of foreign exploitation, pressure, or coercion. The presence of terrorist and insurgent organizations, and the unstable security situation within Pakistan intensify the heightened risk of foreign manipulation and exploitation that exists because Applicant's son, stepmother, and half-siblings are citizens and residents of Pakistan.

At one time, Applicant received an inheritance from his mother in Pakistan worth approximately \$7,500, but he no longer owns the property. Having had a prior ownership interest in an inheritance, which he no longer has, is not a disqualifying concern. He has no bank accounts, property, or investments in Pakistan or any other foreign country.

As for the foreign influence concerns raised by his family members' citizenship and residence in Pakistan (See *generally* AG ¶¶ 7(a) and (b)), Applicant clearly mitigated the concerns. He established in whole or in part the following mitigating conditions under AG ¶ 8:

(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 stepmother and half-siblings are citizens and residents of Pakistan. Applicant never grew up with his stepmother or half-siblings and has had extremely limited contact with them. He grew up living more than 500 miles from them. His last contact with them was in 2013. He saw them for two days following his high school graduation. He saw them in 2005 and in 2010 or 2011 when he visited his father in the hospital. He last saw his half-siblings in 2013 when he visited Pakistan during his father's illness. Overall, the level of contacts that Applicant has with his stepmother and half-siblings does not create a heightened risk of foreign influence under AG ¶ 7(a) or ¶ 7(b). Additionally, AG ¶ 8(a), ¶ 8(b), and ¶ 8(c) would apply if there was a ¶ 7(a) or ¶ 7(b) concern raised about these relatives. I find for Applicant as to SOR 1.b –1.f.

Concerning Applicant's son, who is a citizen and resident of Pakistan, it must be determined if his relationships with his son creates a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his son who may be threatened by terrorists. Applicant's daughter is a naturalized U.S. citizen and his other son is a permanent U.S. resident. Both are living in the United States. There is no security risk created by his children living in the United States.

The activities of the government of Pakistan and terrorist organizations within Pakistan must be reviewed because of son's presence in Pakistan. The evidence of record fails to show that the Pakistani government targets U.S. citizens in the United States or in Pakistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Pakistani Government will seek classified information is moderate. The same cannot be said of terrorists' organizations operating in Pakistan, whose goals are to destroy or prevent the growth of a stable, central government in Pakistan. Due to terrorists' activities in Pakistan, the security concern must be carefully reviewed.

Applicant's son is in the process of becoming a naturalized U.S. citizen and moving to the United States. In September 2012, Applicant was notified the I-130 Immigrant Petition for Relative was approved for his son. His son should have arrived in March 2018, but delays in processing by the CIS slowed his son's immigration. At the time of the December 2018 hearing, Applicant had been told the CIS was processing individuals who should have arrived in March 2018.

Applicant expected his son, barring additional delays, to arrive in the United States within the month following the hearing. Applicant's son is likely to come to the United States based, in part, on the history of Applicant's other two children. His other two children live in the United States. One is a naturalized U.S. citizen and the other, a permanent U.S. resident, has recently been informed he can now apply to become a naturalized citizen.



Security clearance adjudications are predicative judgments, where an applicant's past history is the best indicator of future conduct. The Appeal Board has held that:

Generally, an Applicant's statements, by themselves, as to what he would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant's proven record of action in defense of the U.S. is very important and can lead to a favorable result for an applicant in a Guideline B case. In this case, Applicant has served the U.S. military as a translator in dangerous circumstances in Pakistan and has risked his life to protect American personnel there. (ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). *See also* ISCR Case No. 06-25928 (App. Bd. Apr. 9, 2008); ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006)).

In 2011, Applicant worked as a linguist for the U.S. Air Force in Qatar. He is again seeking employment as a linguist. In 2000, Applicant came to the United States. In 2008, he became a U.S. naturalized citizen. His daughter is also a naturalized citizen and his one son is a permanent U.S. resident. Both live in the United States. AG ¶ 8(b) applies because his ties to the United States are substantial and longstanding. He has shown that he can be counted on to act in the interests of the United States. Applicant mitigated the foreign influence concerns.

### **Guideline G, Alcohol Consumption**

The security concern for alcohol consumption is set forth in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following disqualifying condition is potentially applicable in this case:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with an alcohol use disorder;

As alleged in the SOR, and admitted, Applicant incurred two alcohol-related offenses: one in 2008 and the second in 2016. AG ¶ 22(a) applies. In 2008, Applicant was convicted of Open Container and DUI and paid \$700. In January 2016, Applicant was again arrested for DUI (misdemeanor). His BAC was .123. This arrest occurred more than three years ago. Disqualifying condition AG ¶ 22(a) provides:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

In January 2016, Applicant drove his pickup to get a pack of cigarettes. He believes going to get those cigarettes cost him \$6,000. He said he had been drinking because he was missing his wife who had died a few months earlier. He received a deferred sentence and was placed on probation for 18 months. His probation ended in November 2017. In August 2016, he completed the Victims' Impact Panel and in September 2016, he completed a 24-hour DUI Offender Assessment course during which he learned not to drive after having one drink.

On November 1, 2017, all the conditions of the deferred judgment and sentence had been satisfied and all fines, cost, and all assessment have been paid as ordered. The court found Applicant should be discharged without a court judgment of guilt. The plea of guilty or *nolo contendere* was expunged from the record and the charge dismissed. An Order Withdrawing, Dismissing, and Expunging Plea was entered.

Applicant last drank alcohol in January 2016, at the time of his arrest. He no longer drinks alcohol and does not intend to consume alcohol in the future. He also refrains from going to parties where alcohol is likely to be present. Since January 2016, he has had no criminal arrests or citations, alcohol-related or otherwise. There is no record evidence of subsequent instances of intoxication. He does not consume alcohol, nor does he appear to socialize with those who do. He has therefore demonstrated a clear and established pattern of modified consumption or abstinence.

Applicant has demonstrated that his alcohol issues are unlikely to recur and are no longer a security concern. He has provided sufficient evidence to mitigate the alcohol-related security issues under AG ¶¶ 23(a) and (b).

## Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's two alcohol related arrests were cross alleged under Guideline G, alcohol consumption, Guideline J, criminal conduct. The Appeal Board has held that security-related conduct can be considered under more than one guideline, and in an appropriate case, be given independent weight under each. See ISCR Case No. 11-06672 (App. Bd. Jul. 2, 2012). The comments under Guideline G also apply to the Guideline J allegations.

The two DUI arrests and convictions establish the following disqualifying conditions under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant's two DUIs establish a pattern of criminal misconduct that casts doubt about his judgment, reliability, and trustworthiness, and calls into question his ability or willingness to comply with laws, rules, and regulations.

However, as previously stated, on November 1, 2017, all the conditions of Applicant's deferred judgment and sentence related to his most recent DUI arrest had been satisfied and all fines, cost, and all assessment have been paid as ordered. The court found Applicant should be discharged without a court judgment of guilt and the plea of guilty or *nolo contendere* was expunged from the record and the charge dismissed. An Order Withdrawing, Dismissing, and Expunging Plea was entered. Additionally, Applicant last drank in January 2016, at the time of his arrest. He no longer drinks alcohol and does not intend to consume alcohol in the future.

Applicant's criminal conduct has been mitigated by the following applicable factor:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant complied with all court requirements. There has been a passage of time without recurrence of criminal activity to conclude that his questionable judgment and criminal misconduct will not recur. AG ¶ 32(a) and AG ¶ 32(b) apply.

### **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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My comments under Guidelines B, G, and J 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 a 64-year-old linguist who is currently awaiting adjudication of his security clearance eligibility before being employed by a defense contractor. In 2011, he worked as a linguist for the U.S. Air Force in Qatar. His service in support of the U.S. military merits considerable respect. He has a number of step-relatives, but has had extremely limited contact with them. His son, a citizen and resident of Pakistan, has recently been informed he is authorized to come to the United States as a permanent U.S. resident. Applicant's other children have already immigrated to the United States. His daughter is a naturalized U.S. citizen and his other son, a permanent U.S. resident, has recently been informed he is now eligible to apply to become a naturalized U.S. citizen.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive and the AGs, to the facts and circumstances in the context of the whole person. The

salient issue is whether Applicant's son living in Pakistan and his two DUI convictions raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) These whole-person factors, in conjunction with the favorable matters noted above, fully mitigate the foreign influence, alcohol consumption, and criminal conduct concerns. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the foreign influence, alcohol consumption, and criminal conduct security concerns.

### **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, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a –1.f:	For Applicant
Paragraph 2, Alcohol Consumption:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant
Paragraph 3, Criminal Conduct:	FOR APPLICANT
Subparagraph 3.a:	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 a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge