



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



In the matter of:

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ISCR Case No. 19-00533

Applicant for Security Clearance

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

05/12/2020

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant has strong connections to Pakistan, a country with serious problems with terrorists. He is close to his mother, and a retired Pakistan colonel is his “best friend.” His mother and the retired Pakistan colonel are citizens and residents of Pakistan. Applicant served 24 years in the Pakistan Army, and he is receiving a pension from the Pakistan government. He and his spouse have property in Pakistan. His connections to Pakistan create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 12, 2018, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On June 12, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (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 national security 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 Guideline B (foreign influence). (HE 2) On August 31, 2019, and October 26, 2019, Applicant responded to the SOR and requested a hearing. (HE 3)

On December 4, 2019, Department Counsel was ready to proceed. On December 18, 2019, the case was assigned to me. On January 17, 2020, the Defense Office of Hearings and Appeals (DOHA) issued a notice, setting Applicant's hearing for February 5, 2020. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered three exhibits (GE 1-3); Applicant did not offer any exhibits; there were no objections to GEs 1-3; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 18-19) On February 19, 2020, DOHA received a transcript of the hearing.

### **Procedural Ruling**

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Pakistan. (Tr. 19; GE 4) Applicant did not object to me taking administrative notice of those facts concerning Pakistan, and I granted Department Counsel's motion. (Tr. 19) 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). Most of Department Counsel's request for administrative notice is quoted without quotation marks and footnotes in the Pakistan section of this decision.

Some details in this case were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

### **Findings of Fact**

In Applicant's SOR response, he admitted all SOR allegations. (Tr. 20; HE 3) He also provided extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 56-year-old linguist who intends to return to Afghanistan to continue to support U.S. operations. (Tr. 6-7; GE 1) He was born in Pakistan. (Tr. 20-21; GE 1) In 1980, he graduated from high school in Pakistan. (Tr. 6) In 1984, he received a bachelor's

degree in Pakistan. (Tr. 6, 21; GE 1) In 2010, he immigrated to the United States from Pakistan along with his spouse and children. (Tr. 28, 114; HE 3 at 6)

From July 2011 to April 2013, Applicant served as a linguist in Afghanistan. (Tr. 7, 29; GE 1) His support of the U.S. military exposed him to a risk of injury or death from combat. (Tr. 31-32) For example, around 2012, an improvised explosive device (IED) exploded near his Stryker vehicle, and he and other vehicle occupants were tossed around inside the vehicle, but Applicant was not injured. (Tr. 45) In January 2019, he returned to Afghanistan as a linguist supporting the United States. (Tr. 7, 40, 43-44) Two days before his February 5, 2020 hearing, he returned to the United States, and he planned to return to Afghanistan the day after his hearing. (Tr. 42) There is no evidence of criminal offenses, use of illegal drugs, delinquent debts, or security violations. (GE 1)

In 1987, Applicant married in Pakistan. (Tr. 51; GE 1) His three children were born in Pakistan in 1991, 1992, and 1995. (GE 1) In 2016, Applicant, his spouse, and his two youngest children were naturalized as U.S. citizens. (Tr. 28, 55; GE 1; GE 3) His oldest son became a U.S. citizen in 2019. (Tr. 56-57) Applicant's three children and one grandchild live in the United States. (Tr. 51; GE 1) Applicant's spouse is employed in a babysitting service. (Tr. 54)

## **Foreign Influence**

SOR ¶¶ 1.a, 1.d, and 1.h, allege Applicant's mother, sister, and sister-in-law (A) are citizens and residents of Pakistan. SOR ¶ 1.k alleges Applicant's spouse owns a home in Pakistan. Applicant's mother is 90 years old, and she uses a wheelchair. (Tr. 74-75) She is unable to travel because she had a stroke, and her medical condition is "declining." (Tr. 74-75; HE 3 at 3, 10; GE 1) He provides financial support to his mother. (Tr. 75) His sister is a homemaker. (Tr. 82; HE 3 at 4, 11) Applicant's spouse's parents passed away, and Applicant's spouse inherited a home in Pakistan from her father valued at about \$125,000. (Tr. 71-73; HE 3 at 8, 15) Applicant's sister-in-law A is partially disabled, and she resides with two children in Applicant's spouse's Pakistan home. (Tr. 71-72, 100-103; HE 3 at 6, 13) Applicant's spouse visits her sister A every year when possible. (Tr. 103; HE 3 at 6) Applicant has weekly and sometimes daily contact with his mother, bi-monthly contact with his sister, and quarterly contact with his sister-in-law A. (Tr. 76, 82-83, 103; GE 1)

SOR ¶ 1.b alleges Applicant's brother (S) is a citizen and resident of Pakistan. From 1971 to 2000, brother S served in the Pakistan army, and he retired at the rank of lieutenant colonel. (Tr. 77-78) He currently works for a company connected with the Pakistan government. (HE 3 at 4, 11) Applicant communicates with his brother S about every two to three months. (Tr. 77-78)

SOR ¶¶ 1.c and 1.e allege Applicant's brother (I), his sister-in-law (R), his brother's son-in-law (B), and Applicant's nephew (I) are citizens and residents of Pakistan, and they work for the Pakistan government. (Tr. 84-85; HE 3 at 4, 11) Brother I lives with Applicant's mother. (Tr. 79) Brother I has worked for a government health agency for more than 20 years. (Tr. 78) Brother I does not work for the military, and he does not have a political position. (HE 3 at 4) Applicant communicates with his brother I about twice a year. (Tr. 80-

82) Applicant's sister-in-law R and nephew I are no longer employed by the Pakistan government. (Tr. 85-87) Sister-in-law R has been a homemaker for several years, and his brother's son-in-law B works for an educational institution. (Tr. 85-88) Applicant communicates with his sister-in-law R, his brother's son-in-law B, and his nephew I when he visits Pakistan, and he does not contact them on a regular basis. (Tr. 88-89; HE 3 at 4, 11-12)

SOR ¶¶ 1.f and 1.g allege Applicant's friends N, K, and I are citizens and residents of Pakistan. They are all retired from the Pakistan military. Friend N served in the Pakistan army from 1986 to 2016 and retired as a colonel. (Tr. 89-91) Friend K and Applicant served in the same infantry unit, and friend K retired from the Pakistan army as a major. (Tr. 92-94) Friend I served in the Pakistan military from 1985 to 2015, and he retired as a colonel. (Tr. 96) Friend I currently has important Pakistan government employment. (Tr. 98) Friend I and Applicant often served together in the Pakistan army. (Tr. 96-98) Applicant communicates with friends N and K about once a year; however, he is no longer close to them. (Tr. 89-94; HE 3 at 5, 12) He does not communicate with them now because he is in Afghanistan. (Tr. 93) He described friend I as his "best friend," and he communicates with friend I on a weekly basis. (Tr. 98; HE 3 at 5, 12) Applicant's spouse and Friend I's spouses are close friends. (Tr. 99) He most recently met with friend I when he went to Pakistan in 2017. (Tr. 100)

SOR ¶ 1.i alleges and Applicant admitted that Applicant served in the Pakistan military from 1985 to 2009; he retired as a major; and he receives a monthly pension from the Pakistan military of about \$400. (Tr. 7-8, 21; HE 3 at 6, 13, 62-63) He was commissioned in the infantry. (Tr. 8, 21) He served the last 10 years of his Pakistan army career as an instructor. (Tr. 24-25) He decided to leave active duty because he had a medical problem. (Tr. 24)

SOR ¶¶ 1.j, 1.l, and 1.m allege Applicant owns in Pakistan: (1) property valued at about \$100,000; (2) a bank account with about \$3,000 on deposit; and (3) a bank account with about \$500 on deposit. The value of his land in Pakistan has varied from about \$40,000 to about \$100,000 depending on a variety of economic factors. (Tr. 70-71) One bank account currently has about \$4,500 on deposit, and amount changes because his retired pay is deposited in the account by the Pakistan government. (Tr. 64, 115-116) He and his family use the funds in the accounts when they visit Pakistan. (HE 3 at 7) They transfer excess funds to his United States accounts. (HE 3 at 7, 8, 14) Applicant inherited the land valued at about \$40,000 to about \$100,000 from his father. (Tr. 66-67; HE 3 at 7, 14) He intends to divide the land inheritance between his three sons. (Tr. 69; HE 3 at 7) Applicant's brother S currently farms Applicant's land in Pakistan. (Tr. 66-69; HE 3 at 7) Around 2013, Applicant sold all of his other property in Pakistan except for the land in SOR ¶ 1.j, and he transferred about \$80,000 to the United States. (HE 3 at 9, 15-16) He used most of the funds from the sale of this property in Pakistan to purchase a house in the United States. (Tr. 34-35, 52-53) He spent some of the \$80,000 to support his family in Pakistan. Applicant has about \$60,000 equity in his house in the United States. (Tr. 53)

Applicant's immediate family knows he is applying for a security clearance; however, his family in Pakistan is not aware of the specifics of his employment. (Tr. 46-

47) He told them that he is a civil engineer. (Tr. 46-47) He did not tell them he is serving in Afghanistan. (Tr. 46-47)

Applicant traveled to Pakistan twice in 2013, once in 2014, once in 2016, and twice in 2017. (Tr. 57-60; GE 1) He typically stayed in Pakistan for 10 to 30 days on each trip. (Tr. 57-60) Several visits were to support one of his siblings and his mother because of their medical issues. (Tr. 57-60) He is nervous about visiting Pakistan because of sensitivities in that country in the areas of religion and politics. (Tr. 27) Freedom of speech in Pakistan is limited and making comments about religion and politics or support of the United States is risky. (Tr. 27) He avoids attending public gatherings in Pakistan. (Tr. 111) Applicant did not renounce his Pakistan citizenship because Pakistan does not recognize renunciation of citizenship for persons born in Pakistan. (Tr. 28) He retains his Pakistan passport because his mother may have a health emergency, and he does not want to have a delay in his travel. (Tr. 29) He occasionally sends money to friends and family living in Pakistan. (Tr. 106-109)

Applicant's spouse's brother-in-law served in the U.S. Army for 30 years, and he is a successful businessman in the United States. (Tr. 118) Applicant describes himself as honest, loyal to the United States, and determined to protect U.S. national security. (Tr. 116-120; HE 3 at 10) He is proud to be a U.S. citizen and to support the U.S. military. (Tr. 110) He is adamant that he would resist any attempt at coercion and unlawful influence. (HE 3 at 10) He is happy about his life in the United States, and he does not intend to leave the United States and return to settle in Pakistan. (Tr. 117-118; HE 3 at 16)

### **The Islamic Republic of Pakistan (Pakistan)**

The separation in 1947 of British India into the Muslim state of Pakistan (with West and East sections) and largely Hindu India was never satisfactorily resolved; India and Pakistan fought two wars and a limited conflict (in 1947-48, 1965, and 1999 respectively) over the disputed Kashmir territory. A third war between these countries in 1971 - in which India assisted an indigenous movement reacting to the marginalization of Bengalis in Pakistani politics - resulted in East Pakistan becoming the separate nation of Bangladesh.

The Department of State travel advisory for Pakistan is Level 3: Reconsider Travel to Pakistan due to terrorism. Four areas of the country (Balochistan Province, KPK Province, Azad Kashmir, and the India Pakistan Border) are at Level 4: Do Not Travel.

Pakistan is a federal parliamentary republic. In July 2018 the Pakistan Tehreek-e-Insaf (PTI) party won the most National Assembly seats in the general elections, and in August 2018, PTI's Imran Khan became prime minister.

Since 2001, U.S. policy has broadly been to assist the creation of a more stable, democratic, and prosperous Pakistan that actively combats religious militancy. A key U.S. ally in combatting terrorism after 9/11, Pakistan had been a leading recipient of U.S. assistance, receiving more than \$30 billion in aid and military reimbursements since 2001.

In January 2019, the U.S. Director of National Intelligence told a Senate panel of “Pakistan’s recalcitrance in dealing with militant groups,” and predicted Pakistan will continue to threaten U.S. interests “by deploying new nuclear weapons capabilities, maintaining its ties to militants, restricting counterterrorism cooperation, and drawing closer to China.” Pakistan is a haven for numerous Islamist extremist and terrorist groups, and successive Pakistani governments are widely believed to have tolerated and even supported some of these as proxies in Islamabad’s historical conflicts with its neighbors.

Although the Pakistani government voiced support for political reconciliation between the Afghan government and the Afghan Taliban, it did not restrict the Afghan Taliban and the Haqqani Network (HQN) from operating in Pakistan-based safe havens and threatening U.S. and Afghan forces in Afghanistan. The government failed to significantly limit Lashkar e-Tayyiba (LeT) and Jaish-e-Mohammad (JeM) from raising money, recruiting, and training in Pakistan - and allowed candidates overtly affiliated with LeT front organizations to contest the July general elections.

Pakistan experienced significant terrorist threats in 2018, although the number of attacks and casualties have continued to decrease from previous years. The major terrorist groups that focused on conducting attacks in Pakistan included Tehrik-e-Taliban Pakistan (TTP), Jamaat-ul-Ahrar (JuA), Islamic State’s Khorasan Province (ISIS-K), and the sectarian group Lashkar-e-Jhangvi al-Alami (LJA). ISIS-K claimed several major attacks against Pakistani targets, some of which may have been conducted in collaboration with other terrorist groups. Separatist militant groups conducted terrorist attacks against governmental, non-governmental, and diplomatic targets in Balochistan and Sindh provinces. Groups located in Pakistan, but focused on conducting attacks outside the country, included the Afghan Taliban, HQN, LeT and its affiliated front organizations, and JeM. Terrorists used a range of tactics to attack individuals, schools, markets, government institutions, and places of worship, including IEDs, VBIEDs, suicide bombings, targeted assassinations, and rocket-propelled grenades.

Terrorist Incidents: Pakistan has experienced numerous recent terrorist attacks. Militant and terrorist groups targeted civilians, journalists, community leaders, security forces, law enforcement agents, and schools, killing and injuring hundreds. Religious minorities faced significant threats from terrorist groups.

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Terrorist financing networks in Pakistan have come under scrutiny. In early 2018, the United States joined Britain in urging other members of the Paris-based Financial Action Task Force (FATF) to return Pakistan to its list of countries found to be insufficiently combating money laundering and terrorism financing, where it had been listed from 2012 to 2015. In mid-2018, FATF formally added Pakistan to this “Gray List.”

Human rights issues in Pakistan include credible reports of extrajudicial and targeted killings; forced disappearances; torture; arbitrary and lengthy pretrial detention; arbitrary or unlawful interference with privacy; censorship, site-blocking, and arbitrary restrictions on journalists’ freedom of movement; severe harassment and intimidation of

and high profile attacks against journalists and media organizations; government restrictions on freedom of peaceful assembly and association, including overly restrictive nongovernmental organizations (NGO) laws; restrictions on religious freedom and discrimination against members of religious minority groups; restrictions on freedom of movement; corruption within the government; recruitment and use of child soldiers by non-state militant groups; lack of criminal investigations or accountability for cases related to rape, sexual harassment, so-called honor crimes, female genital mutilation/cutting, and violence based on gender, gender identity and sexual orientation; legal prohibitions of consensual same-sex sexual conduct; forced and bonded labor and transnational trafficking in persons; and the worst forms of child labor.

In early 2017, after Pakistan's military announced the nationwide Radd-ul-Fasaad or "Elimination of Strife" operation to prevent cross-border terrorist attacks and limit militants' access to explosives and weapons, government and military sources reported scores of military and police operations to disarm, disrupt, kill, and apprehend terrorists. Military courts operated without transparency and sentenced at least 104 convicted terrorists to death in 2018, up from at least 15 in 2017.

The Pakistani military and intelligence services nominally reported to civilian authorities but essentially operated without effective civilian oversight. There was a lack of government accountability, and abuses often went unpunished, fostering a culture of impunity among the perpetrators, whether official or unofficial. Authorities seldom punished government officials for human rights abuses.

## **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.

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. Thus, nothing in this decision should be construed to suggest that it is based, 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). “It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted). 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. Sept. 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 lists conditions that could raise a security concern and may be disqualifying in this case:

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

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

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

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

Applicant's mother, two brothers, one sister, two sisters-in-law, one brother's son-in-law, one nephew, and three friends are citizens and residents of Pakistan. From 1985 to 2009, Applicant served in the Pakistan army, and he is receiving a \$400 monthly pension from the Pakistan government. He and his spouse own land in Pakistan, and Applicant has two bank accounts in Pakistan. Applicant admitted all of these SOR allegations.

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 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 mere possession of close family ties with relatives living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, 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 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation’s government’s relationship with the United States. These factors are relevant in assessing the likelihood that an applicant’s family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorism causes 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 with the United States and the situation in Pakistan place a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member or friend living in or visiting Pakistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns about assisting someone living in or visiting Pakistan.

The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at \*20-\*21 n. 18 (App. Bd. July 28, 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 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. 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.

Guideline B security or trustworthiness concerns are not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and

safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at \*11-\*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Pakistan 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 has a significant problem with terrorism and crime. Applicant’s family in that country “could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him.” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant’s relationships with people who are living in Pakistan or visiting that country create a potential conflict of interest because terrorists could place pressure on those living in Pakistan in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Department Counsel produced substantial evidence of Applicant’s relationships with people living in Pakistan and property in Pakistan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), 7(e), and 7(f) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

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

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

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

As indicated in the disqualifying conditions section, Applicant has several relatives and three friends who are citizens and residents of Pakistan. Applicant retired from the Pakistan army as a major, and he is receiving a \$400 monthly pension from the Pakistan government. He and his spouse own land in Pakistan, and Applicant has two bank accounts in Pakistan.

Applicant's SOR does not allege: (1) Applicant, his spouse, and his three children were born in Pakistan; (2) his spouse traveled to Pakistan almost every year for several years; (3) Applicant retains a Pakistan passport to facilitate visits to Pakistan; (4) Applicant traveled to Pakistan twice in 2013, once in 2014, once in 2016, and twice in 2017; and (5) when he traveled to Pakistan, he typically stayed in Pakistan for 10 to 30 days. 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. Apr. 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)). The non-SOR allegations will not be considered except for the five purposes listed above.

The Appeal Board has concluded that contact every two months or more frequently constitutes “frequent contact” under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sept. 26, 2006) (finding contacts with applicant’s siblings once every four or five months not casual and infrequent and stating “The frequency with which Applicant speaks to his family members in Iran does not diminish the strength of his family ties.”). Applicant has frequent contact with several relatives who are citizens and residents of Pakistan. He has weekly and sometimes daily contact with his mother, bi-monthly contact with his sister, and quarterly contact with sister-in-law A. (SOR ¶¶ 1.a, 1.d, and 1.h) He described friend I as his “best friend,” and he often communicates with friend I on a weekly basis. (SOR ¶ 1.g)

Applicant is credited with mitigating the SOR allegations in ¶¶ 1.b, 1.c, 1.e, 1.f, and 1.m. He communicates with his brother S about every two to three months, and with brother I about twice a year. He rarely communicates with his sister-in-law R, nephew I, and brother’s son-in-law B. Applicant communicates with friends N and K about once a year. His bank account with about \$500 on deposit is too insignificant compared to his overall net worth to cause a security concern.

Even so, Applicant has significant financial connections to Pakistan. He owns land valued at about \$40,000 to \$100,000, has a bank account with about \$4,500 on deposit, and receives a \$400 monthly pension for his 24 years of service in the Pakistan Army. (SOR ¶¶ 1.i, 1.j, and 1.l) His spouse owns a home in Pakistan valued at about \$125,000. (SOR ¶ 1.k) The value of his and his spouse’s property in Pakistan exceeds the value of his property in the United States.

A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has significant connections to the United States. Applicant, his wife, and his three children are citizens and residents of the United States. Applicant’s spouse’s brother-in-law served in the U.S. Army for 30 years, and he is a successful businessman in the United States. Applicant owns property in the United States. Applicant and his spouse have U.S. employment. Applicant intends to permanently reside in the United States.

Applicant’s support to the DOD in Afghanistan, including the dangers that service entailed, weighs heavily towards mitigation of security concerns. Applicant seeks a security clearance to enable him to continue 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).

It is important to be mindful of the United States' huge historical investment of manpower and money in the Afghanistan. Applicant's support to DOD contributes to the accomplishment of DOD's goals and missions in Afghanistan. In addition, Pakistan is a key U.S. ally in combatting terrorism after 9/11, and Pakistan had been a leading recipient of U.S. assistance, receiving more than \$30 billion in aid and military reimbursements since 2001.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Pakistan. Applicant has close relationships with family and a friend in that country, and they are at risk from criminals, terrorists, and human rights violations of the Pakistan government. Applicant's access to classified information could theoretically add risk to his relatives living in Pakistan.

In sum, Applicant's connections to his relatives and a retired colonel in the Pakistan army (friend I) who are living in Pakistan combined with his military service to Pakistan and his and his spouse's property ownership in Pakistan are too significant to mitigate based on the circumstances Applicant presented. His connections to the United States taken together, while important, are not sufficient to overcome the foreign influence security concerns under Guideline B.

### **Whole-Person Concept**

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

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

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

Applicant is a 56-year-old linguist who intends to return to Afghanistan to support U.S. operations. In 1984, and he received a bachelor's degree. In 2010, he immigrated to the United States from Pakistan along with his spouse and children. He honorably served in Afghanistan, where he risked injury or death in support of the United States mission. He honestly and sincerely described his love and support for the United States. He intends to permanently reside in the United States. There is no evidence of criminal offenses, use of illegal drugs, delinquent debts, or violation of security rules or responsibilities while serving with U.S. forces in Afghanistan. See ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (noting admissibility of "good security record," but commenting that security concerns may nevertheless not be mitigated).

A Guideline B decision concerning Pakistan must take into consideration the geopolitical situation and dangers in that country. 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). Pakistan is a dangerous place because of violence from terrorists and criminals, and the Pakistan government does not respect the full spectrum of human rights. Terrorists and criminals in Pakistan continue to threaten the interests of the United States and those who cooperate and assist the United States.

Applicant has a close relationship with his mother, and he provides some financial support to her. He also maintains close relationships with citizens and residents of Pakistan including other relatives and friend I. Applicant's 24 years of military service to Pakistan demonstrated his close bond to Pakistan. His connections to and support for family and friends in Pakistan exemplify good character traits including loyalty to family and friends.

Applicant cannot control his family members' decisions to live and work in their native Pakistan. While there is nothing untoward about his relationships and contacts with his family members in Pakistan, his present circumstances are such that he could be placed in an untenable position of having to choose between the interests of a loved one and the United States. "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." See ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009) (reversing grant of

security clearance because of Applicant's connections to his brother, a Nigerian official). Based on the facts and circumstances before me, concerns of undue foreign influence persist.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are 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
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant
Subparagraphs 1.g through 1.l:	Against Applicant
Subparagraph 1.m:	For 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.

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Mark Harvey  
Administrative Judge