



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



In the matter of:)
)
 REDACTED) ISCR Case No. 19-03255
)
 Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2022

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has ongoing contact with a cousin in Pakistan, whom he relies on to handle issues relating to property he owns in that country. Applicant's and his spouse's real estate assets in Pakistan are sufficiently substantial to create an unacceptable risk of undue foreign influence. Clearance eligibility is denied.

Statement of the Case

On January 3, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B, foreign influence. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On January 22, 2020, Applicant responded to the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Processing of the case to a hearing was delayed because of the COVID-19 pandemic. On February 17, 2021, a DOHA Department Counsel indicated that the Government was ready to proceed to a hearing. On March 8, 2021, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national security interests of the United States to grant or continue a security clearance for Applicant. I received the case file and assignment on March 12, 2021.

On March 15, 2021, I informed Applicant of the option of having a virtual hearing online using the Defense Collaboration Services (DCS) system. Applicant requested an in-person hearing, which caused further delay in scheduling due to pandemic-related travel restrictions for the Government. After some coordination with the parties, on October 22, 2021, I scheduled an in-person hearing for Applicant to be held on December 2, 2021.

At the hearing held as scheduled, the Government withdrew Guideline B allegation SOR ¶ 1.c. One Government exhibit (GE 1) and 11 Applicant exhibits (AEs A-K) were admitted in evidence without any objections. Applicant objected to my consideration of a summary report of his subject interviews, which was proposed as GE 2, and the document was not admitted in evidence due to lack of authentication under ¶ E3.1.20 of the Directive. At the Government's request, I incorporated into the record a Request for Administrative Notice Islamic Republic of Pakistan, dated April 6, 2020, as a hearing exhibit (HE I), as set forth below. Applicant testified, as reflected in a hearing transcript (Tr.) received on December 10, 2021.

After the hearing, I reopened the record for comment from both parties as to my consideration of updated State Department publications. In his response dated February 5, 2022, Applicant made some representations that were evidentiary in nature. His response was entered into the record as AE L without any objections from the Government.

Ruling on Request for Administrative Notice

At the hearing, the Government submitted a request for administrative notice concerning the Islamic Republic of Pakistan (Pakistan) dated April 6, 2020. The Government's request for administrative notice was based, in part, on eight publications of the U.S. State Department: *Pakistan 2018 Human Rights Report*, dated March 3, 2019; *Pakistan Travel Advisory*, dated January 31, 2020; *Security Alert – U.S. Embassy Islamabad, Pakistan*, dated January 3, 2020; *Security Alert – U.S. Consulate General Lahore, Pakistan*, dated January 7, 2020; *Security Alert – U.S. Consulate General Lahore, Pakistan*, dated January 11, 2020; *2018 Country Reports on Terrorism*, dated October 2019; *Pakistan 2019 Crime and Safety Report: Lahore*, dated July 2, 2019; *Pakistan 2019 Crime and Safety Report: Peshawar*, dated July 3, 2019. The request was also based on a publication of the U.S. Central Intelligence Agency, *The World Fact Book*:

Pakistan, updated on January 29, 2020, and on a publication of the U.S. Congressional Research Service, *Pakistan – U.S. Relations*, dated January 15, 2019. Department Counsel provided extracts of the source documents and the URLs where the full documents could be obtained. Applicant confirmed that he received the Government's request for administrative notice with the extracts.

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties that I would take administrative notice of the facts requested by the Government with respect to Pakistan, subject to the relevance and materiality of the source documentation, including whether the facts are substantiated by reliable government sources, and subject to any valid objections from Applicant. As his rebuttal to the Government's request, Applicant provided information about Pakistan for my consideration in AEs C-I.

The Government's request of April 6, 2020, was not based on current information in several aspects. Under Appeal Board precedent, the administrative judge is required to take notice, even *sua sponte*, of current official pronouncements of the U.S. government which have a bearing on the issues to be resolved in a given case. In that regard, I noted that the U.S. State Department had issued its *2020 Country Reports on Human Rights Practices: Pakistan*, on March 30, 2021. An updated bilateral relations fact sheet, *U.S. Relations with Pakistan*, was issued on January 20, 2021. On November 15, 2021, the State Department issued an updated *Pakistan Travel Advisory*. These documents were issued before Applicant's hearing. Accordingly, I informed the parties on January 30, 2022, that I intended to review these publications of the State Department for administrative notice purposes. I provided them with the URLs where the documents could be accessed, and gave them a response deadline of February 11, 2022.

Applicant responded on February 5, 2022. He did not object to my consideration of the updated documents, but asked that I take into account the historical relationship between the United States and Pakistan. The Government did not file any objections to the updated documents. Accordingly, copies of the publications were incorporated in the record as HEs II-IV for administrative notice purposes.

Findings of Fact

The amended SOR alleges under Guideline B that Applicant's father and stepmother (SOR ¶ 1.a), two stepbrothers (SOR ¶ 1.b), and a cousin (SOR ¶ 1.d) are resident citizens of Pakistan; that Applicant's father transferred property to him in 2016 (SOR ¶ 1.e); that Applicant has two bank accounts in Pakistan with about \$16,000 on deposit (all values in US dollars unless specified as rupees) (SOR ¶ 1.f); that Applicant's spouse owns two properties in Pakistan valued at approximately \$160,000 (SOR ¶ 1.g); that Applicant's spouse has a bank account in Pakistan with about \$2,000 on deposit (SOR ¶ 1.h); and that Applicant possesses an overseas Pakistan identification (ID) card to conduct monetary transactions in Pakistan (SOR ¶ 1.i).

When Applicant responded to the SOR, he explained that his father died in 2018. He admitted that his stepmother, two stepbrothers, and cousin are resident citizens of Pakistan, but he denied any current contact with his stepmother or stepbrothers. He stated that he has infrequent interactions with his cousin “as she takes care of a house that [he] inherited from [his] father.” Applicant admitted the allegations concerning his and his spouse’s financial and property interests in Pakistan. He also admitted that he possesses an Overseas Pakistan ID card because it is required to conduct monetary transactions in Pakistan. He asked that he be allowed to retain the security clearance he has held for almost 15 years.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is 67 years old. He was born and raised in Pakistan as were his two sisters. Applicant’s parents were born in what was then India, but became resident citizens of Pakistan after the country gained its independence. His mother died in March 1972. (GE 1.) His father was a high-ranking member of Pakistan’s military (the equivalent of a three-star general) before a military coup in 1977, when the new president brought him into Pakistan’s civilian government. He represented a branch of Pakistan’s military in a civilian capacity and served as a cabinet minister for a succession of different departments in Pakistan’s government before leaving government service in 1984 or 1985. (Tr. 45-48, 60.)

Applicant graduated from high school in Pakistan in 1972. From 1972 to 1973, Applicant studied on a scholarship at a technical university in the Middle East. (AE B.) In June 1974, he enlisted in Pakistan’s military so that he could attend an aeronautical engineering college funded in part by the U.S. military in Pakistan. (GE 1; Tr. 44.) Applicant’s instructor for three electrical engineering courses was a captain in the United States Air Force. He provided a positive reference for Applicant in November 1977, attesting that Applicant was a top student, able to think clearly and independently, and motivated to excel in the classroom and in his research activities. He opined that Applicant would be very successful in graduate school. (AE A.)

After Applicant earned his bachelor’s degree in January 1977, he continued serving as an officer in Pakistan’s military until March 1980. He had become disillusioned after new military leadership downplayed the importance of engineering within the military, and two years after obtaining a transfer out of maintenance engineering, he was discharged from his military obligation. (GE 1; Tr. 43-45.)

In August 1980, Applicant came to the United States on a student visa to pursue his master’s degree. (GE 1; Tr. 43.) While he was in college in the United States, his father married a Pakistani resident citizen with three sons. (GE 1; Tr. 34.) Applicant did not develop much of a personal relationship with his stepmother or stepbrothers. He visited with them “once in a while” when he was in Pakistan. (Tr. 34.)

In September 1981, Applicant earned his master's degree from a public university in the United States. (GE 1; Tr. 50.) Early in September 1981, he married a resident citizen of Pakistan in Pakistan. Applicant and his spouse decided to make their home and raise a family in the United States. Their three children, a son age 37 and daughters ages 35 and 26, are U.S. resident citizens from birth. Applicant became a U.S. citizen by naturalization in August 1992. His acquisition of U.S. citizenship served to automatically revoke his citizenship with Pakistan. Applicant's spouse has U.S. citizenship. The date of her naturalization is not in evidence. In July 1996, Applicant and his spouse purchased their current residence in the United States. (GE 1.)

Applicant obtained his first U.S. passport in November 1992. He traveled to Pakistan on his U.S. passport, annually or every other year, to visit his father before his father's death in 2018. (GE 1; Tr. 34.) During some of his trips to Pakistan, he visited his parents-in-law before their deaths, and some extended family members (uncles and a cousin) who lived in the same city as his in-laws. (Tr. 51.)

Since 1985, Applicant has operated his own business as a self-employed consultant in the United States. During his early career, he was involved in industrial product development that was not defense-related. In June 2004, Applicant became involved in DOD-applied research as a consultant to a federally-funded development laboratory. He was granted a secret clearance for his duties in July 2005. In August 2012, Applicant ended his consultancy because the laboratory wanted him to become a full-time employee rather than pay him as a business. (GE1.)

In August 2012, Applicant began working as a contractor for another federally-funded laboratory. On August 31, 2015, Applicant completed and certified as accurate a Questionnaire for National Security Positions to renew his clearance eligibility. He disclosed that, as a U.S. citizen, he holds an identification card issued by the Pakistan government to "people of Pakistani origin living in the US," so that he can conduct monetary transactions in Pakistan. He indicated that he had in-person contact with his father in Pakistan to as recently as May 2014. Applicant's siblings had acquired U.S. citizenship and were living in the United States as of August 2015, while his stepmother and two of his three stepbrothers were resident citizens of Pakistan. Applicant indicated that he had monthly contact by telephone or electronic means with his stepmother. He had in-person contact with one stepbrother when he was in Pakistan to as recently as April 2012. He had annual contact with the other stepbrother in Pakistan to as recently as August 2014. His third stepbrother had acquired U.S. citizenship and was living in the United States as of August 2015. (GE 1.)

In response to an SF 86 inquiry concerning whether he or his spouse had any foreign financial interests, Applicant reported that he had received his share of agricultural land inherited from his mother. The land was worth about \$200,000 when it was sold. He disclosed that he had deposited \$15,000 in a bank account in Pakistan from the sale of land, and there was \$7,000 in the account as of August 2015. He reported on his SF 86 that his spouse had \$2,000 in a bank account in Pakistan from the sale of land. She sold a plot of land in Pakistan worth about \$20,000 in March 2010 and used the proceeds to

purchase two plots of land in Pakistan for \$60,000 in May 2010. The value of those plots had appreciated to \$100,000. Applicant listed among his foreign travels six trips to Pakistan between April 2008 and September 2014 to visit family or friends. (GE 1.)

Regarding the sale of the agricultural land that Applicant and his sisters co-inherited from their mother, his sisters gave him power of attorney to sell the land. He sold the land around May 2011 and deposited \$130,000 to \$140,000 from the sale into his bank account in Pakistan. After transferring his sisters' shares to them, he transferred about \$80,000 of his share to his bank account in the United States to pay college expenses for his son and older daughter and private high school expenses for his younger daughter. (Tr. 35.) He kept about \$15,000 in his U.S. dollar account in the Pakistani bank. (Tr. 52-53.)

Applicant's father transferred ownership of one of his three properties in Pakistan to Applicant in 2016. (Answer.) His father deposited \$10,000 to \$15,000 into Applicant's bank account in Pakistan to pay for renovations to the property. (Tr. 53.) Applicant rents out two units, and his cousin in Pakistan, who is in her 70s and "real estate savvy," handles the issues involving the property for him. He needs someone in Pakistan to sign contracts on his behalf, and she lives in the same sector as the property, so it is convenient for her to oversee the property. Applicant's cousin is not affiliated with Pakistan's government. (Tr. 36-40.) Applicant indicated in response to the SOR that his interactions with his cousin were "infrequent." (Answer.) He testified that he currently contacts his cousin only when repairs are needed to the property or when tenancy changes. (Tr. 55.) Applicant contacted his cousin in mid-to-late November 2021 regarding repairs being made to the premises. (Tr. 56.)

In the fall of 2021, Applicant listed his property in Pakistan for sale at an asking price of over \$2 million. He is willing to accept its current market value of \$2 million. (Tr. 55.) He believes it will take some time to sell, given it "is a pricey land" in an older sector of the city. (Tr. 40.) He has three real estate agents trying to sell the property. (AE L.) Due to the current exchange rate of rupees to dollars, continuing to rent it out does not make economic sense, and he has little reason to keep the property, given his immediate family and siblings live in the United States. (Tr. 40-41.) Two of Applicant's children are physicians while the third works as an architect. (Tr. 50.)

Applicant continues to maintain two bank accounts in Pakistan: an account in dollars and an account in Pakistan rupees. Under Pakistan's laws, rent is required to be paid in rupees, even by non-Pakistani tenants. For a short time, his cousin was a signatory on the rupee account while he was having the premises renovated. He took her off his rupee account in Pakistan because she had to disclose the assets on her income tax returns, and it affected her tax rate. (Tr. 54.) Applicant is currently the only signatory to his bank accounts in Pakistan. He maintains the dollars account for the ease of currency transfers out of Pakistan. (Tr. 36.) The balance of that account is currently around \$3,000. (Tr. 53.) He has about 600,000 rupees (almost \$3,400) in the rupees account. (Tr. 53-54.) Applicant retains his ID card issued by Pakistan's government to its former citizens so that he can conduct currency transactions in Pakistan. It is not a travel card. (GE 1.)

Applicant's spouse still owns two plots of land in Pakistan. Their aggregate value has appreciated to approximately \$250,000 to \$300,000. His spouse does not have a present intention to divest herself of those assets. She continues to have a bank account in Pakistan, but the account has largely been inactive so the amount on deposit has not changed significantly from 2015. (Tr. 57-58.)

Applicant denies that he could be pressured because of his and his spouse's financial assets in Pakistan, which he considers as "not important to their overall financial situation." Applicant and his spouse's home in the United States is valued around \$1.5 million, and their equity in the house is about \$1 million. Applicant has \$100,000 in an individual retirement account in the United States. (Tr. 41.)

Applicant traveled to Pakistan in 2018 on the death of his father. He returned to Pakistan in early 2019, to settle matters related to his father's estate. (Tr. 34, 52.) He asserts that his settlement of his father's estate was acrimonious and left no chance of him having any interactions with his stepmother or stepbrothers in the future. (Answer.) Applicant sees little reason for him to travel to Pakistan in the future. (Tr. 35.)

Applicant wants to continue to contribute to the U.S. interests. He is currently contributing to three projects for three different defense organizations. (AE L.)

Administrative Notice

Administrative notice is not taken of the source documents in their entirety, but of specific facts properly noticed and relevant and material to the issues. I take administrative notice of the facts requested by the Government in HE I and of other facts set forth in the source publications from the U.S. State Department, including the updated human rights report (HE II), bilateral relations fact sheet (HE III), and travel advisory (HE IV). Inasmuch as AEs C-I pertain to Pakistan or Pakistani entities and do not involve Applicant, relevant facts in those exhibits are also set forth below.

Pakistan is a federal parliamentary republic. Prime Minister Imran Khan assumed office in 2018 after the Pakistan Tehreek-e-Insaaf (PTI) party took a plurality of seats in the July 2018 general elections. The United States has had diplomatic relations with Pakistan since the country's independence in 1947. The United States and Pakistan work closely on a wide array of issues, including efforts to stabilize Afghanistan, counterterrorism, energy, trade, and investment. Pakistan has been designated by the United States as a major non-NATO ally. (AE C.) The United States, Pakistani, and German navies conducted a tri-lateral passing exercise on September 6, 2021, to strengthen cooperation and advance a common vision to ensure peace and stability. On September 7, 2021, the United States and Pakistan engaged in bilateral training to continue the substantive collaboration between the two countries. (AE D.) The United States has been one of the largest sources of foreign direct investment in Pakistan, and remains Pakistan's largest export market. Over the past few years, Pakistan has been strengthening its trade and investment ties with other European countries, including the

United Kingdom. (AEs F-G.) Net foreign direct investment in Pakistan jumped to an 11-month high at \$236 million in September 2021. (AE E.)

Pakistan has been engaged in a decades-long armed conflict with militant groups that target government institutions and civilians, including the Tehrik-i-Taliban Pakistan (TTP) and other militant networks. Pakistan has taken actions against externally-focused militant groups and United Nations-designated terrorist organizations operating within its territory in accord with the country's National Action Plan against terrorism. However, due to Pakistan's failure to take decisive and irreversible action against these groups, the United States suspended security assistance to Pakistan in January 2018, with narrow exceptions in U.S. national security interests. In January 2019, the U.S. Director of National Intelligence told a Senate panel that Pakistan is recalcitrant to deal with militant groups. It remains a safe haven for numerous Islamist extremist and terrorist groups. 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 Haqqani Network from operating in Pakistan and Afghanistan using Pakistan-based safe havens.

Pakistan's security environment has improved since 2014. Yet Pakistan remains at high risk for terrorism. Militants and terrorist groups, including the TTP, Lashkar-e-Jhangvi, and the Islamic State Khorasan Province targeted civilians, journalists, community leaders, security forces, law enforcement officers, and schools, killing and injuring hundreds with bombs, suicide attacks, and other forms of violence in 2020. On November 15, 2021, the U.S. State Department issued a Level 3 – Reconsider Travel to Pakistan due to terrorism and sectarian violence. Terrorist groups continue plotting attacks in Pakistan. A local history of terrorism and ongoing ideological aspirations of violence by extremist elements have led to indiscriminate attacks on civilian as well as local military and police targets. The State Department advises that terrorists may attack with little or no warning, targeting transportation hubs, shopping malls, military installations, airports, universities, tourist locations, schools, hospitals, places of worship, and government facilities. While rare in the capital Islamabad, terrorist acts continue in other areas of Pakistan. Large-scale terrorist attacks have resulted in numerous casualties, with most of the attacks occurring in the Balochistan and the Khyber Pakhtunkhwa (KPK) provinces, including the former Federally Administered Tribal Areas (FATA). The current travel warning to these areas is Level 4 – Do Not Travel due to terrorism and kidnapping. The United States has limited ability to provide emergency services to U.S. citizens in Pakistan due to the security environment. Travel by U.S. government personnel within Pakistan is restricted.

Police have primary domestic security responsibility for most of the country with local police being under the jurisdiction of provincial governments. Paramilitary organizations, including the Frontier Corps which operates in Balochistan and KPK provinces, including the former FATA, and the Rangers, which operate in Sindh and Punjab, provide security services under the authority of the Ministry of Interior. Pakistan's military is the lead security agency in many areas of the former FATA. The military and

intelligence services operate independently and without effective civilian oversight. Members of the security forces committed numerous abuses in 2020.

Significant human rights issues in Pakistan included unlawful or arbitrary killings by the government or its agents, including extrajudicial killings; forced disappearance by the government or its agents; torture and cases of cruel, inhuman, and degrading treatment or punishment by the government or its agents; arbitrary detention; harsh and life-threatening prison conditions; and political prisoners and politically-motivated reprisal. A prominent tribal figure and Pashtun rights leader, who had been recently released from jail for speeches critical of the Pakistani military establishment, died after being shot by identified actors outside his home on May 1, 2020. There were numerous reports of fatal attacks against police and security forces in Pakistan in 2020. Kidnappings and forced disappearances of persons took place in nearly all areas of the country. There were reports of police making arrests to extract bribes. While the law provides for an independent judiciary, the judiciary was often subject to external influences, such as fear of reprisal from extremist elements in terrorism or blasphemy cases and public politicization of high-profile cases.

Other human rights abuses included arbitrary or unlawful government interference with privacy; serious restrictions on free expression, the press, and the Internet, including violence against journalists, censorship, and Internet-site blocking; government interference with the rights of peaceable assembly and freedom of association, including of workers; severe restrictions on religious freedom; restrictions on freedom of movement; corruption within the bureaucracy; lack of accountability for gender violence; unlawful recruitment of child soldiers; and the use of the worst forms of child labor. In 2018, 2019, and 2020, the U.S. Department of State designated Pakistan as a Country of Particular Concern under the 1998 International Freedom Act, as amended, for having engaged in or tolerated severe violations of religious freedom.

There was a lack of government accountability, and abuses often went unpunished, fostering a culture of impunity among perpetrators, whether official or unofficial. Authorities seldom punished government officials for human rights abuses in 2020. Corruption was pervasive in politics and government in 2020. Terrorist violence and human rights abuses by non-state actors contributed to human rights problems, although to a lesser extent than in previous years due to the overall decline in terrorist activity and military, police, and law enforcement campaigns against militant and terrorist groups. Political, sectarian, criminal, and ethnic violence continued in Karachi in 2020.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

potentially disqualifying conditions and mitigating conditions, which are required to 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for 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 that 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. Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

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

Foreign contacts and interests, including but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way 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 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.

Applicant's stepmother, two stepbrothers, and a cousin are resident citizens of Pakistan. Review of Applicant's foreign contacts and connections to determine whether they present a heightened risk under AG ¶ 7(a) or create a potential conflict of interest under AG ¶ 7(b). Disqualifying conditions AG ¶¶ 7(a) and 7(b) provide:

(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.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the familial ties and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a close friend or family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Pakistan is a major non-NATO ally of the United States. The United States and Pakistan work closely on a wide array of issues, including efforts to stabilize Afghanistan, counterterrorism, energy, trade, and investment. The United States is one of the largest sources of foreign direct investment in Pakistan, and remains Pakistan's largest export market. Guideline B concerns are not limited to countries hostile to the United States. Even friendly nations may have interests that are not completely aligned with the United States. The Appeal Board has long held that "[t]he 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." *See* ISCR Case No. 02-11570 (App. Bd. May 19, 2004).

The interests of the two countries have not always been aligned. Due to Pakistan's failure to take decisive and irreversible action against externally-focused militant groups and United Nations-designated terrorist organizations operating within its territory, the United States suspended security assistance to Pakistan in January 2018, with narrow exceptions in U.S. national security interests. In January 2019, the U.S. Director of National Intelligence told a Senate panel that Pakistan is recalcitrant to deal with militant groups. It remains a safe haven for numerous Islamist extremist and terrorist groups. 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 Haqqani Network from operating in Pakistan and Afghanistan using Pakistan-based safe havens.

Pakistan was not reported to conduct intelligence operations against the United States. However, Pakistan has serious human rights problems and is at significant risk of terrorist activity within its borders. The risk of terrorism in Pakistan has led the U.S. State Department to continue to advise travelers to exercise increased caution when in the country and to not travel to certain areas of Pakistan.

Applicant had limited contact over the years with his stepmother and stepbrothers in Pakistan. Applicant's father remarried after Applicant came to the United States, and Applicant did not establish strong bonds of affection or obligation to his stepmother or her sons. As of his August 2015 SF 86, Applicant reportedly had monthly contact with his stepmother; only in-person contact with one stepbrother, which occurred less than annually; and annual in-person contact with the other stepbrother in Pakistan. Following the acrimonious distribution of his father's estate in 2019, he has no ongoing contact with them. Applicant does not appear to be at heightened risk of undue foreign influence because of his stepmother and stepbrothers' residency and citizenship in Pakistan. Applicant's connections to his step-relatives are not seen as creating a potential conflict of interest. There is no indication that Applicant would jeopardize classified information to protect them.

Applicant did not elaborate about his personal relationship with his cousin in Pakistan. He did not list her as a foreign contact on his SF 86 and stated in response to the SOR that he has "infrequent interactions with her." What is known is that he relies on his cousin to oversee and maintain his real estate in Pakistan. He has given his cousin authority to execute contracts on his behalf regarding repairs and rental issues in Pakistan. After ownership of the house was transferred to Applicant in 2016, his cousin was a signatory to his rupee account in Pakistan, although he has since had her removed because of the tax problems it was causing her. Applicant called his cousin a week or so before his December 2021 hearing because repairs were being made to his property in Pakistan. It is unclear whether Applicant would maintain a relationship with his cousin or have more than casual contact with her were it not for his house. Because his contact with her centers on his property, the evaluation of the risk of undue foreign influence or of a potential conflict of interest with respect to his cousin depends largely on whether his

foreign financial and property interests present a heightened risk under AG ¶ 7(f), which provides:

(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 recently listed his house in Pakistan for sale for more than \$2 million. He was not more specific about the asking price, but indicated that he would accept \$2 million, the current market value of his foreign property. His spouse owns two plots of land, whose market value has appreciated to between \$250,000 and \$300,000. Applicant asserts that his and his spouse's foreign assets are "not important to their overall financial situation." This appears to be so with respect to their bank assets in Pakistan. Applicant has two bank accounts in Pakistan with about \$6,400 in total deposits. His spouse has about \$2,000 on deposit in a bank account in Pakistan. These assets are minimal. However, their real estate interests implicate AG ¶ 7(f). They are of substantial value, and it is conceivable that Applicant's activities on behalf of the United States could come to the attention of someone seeking U.S. sensitive information. It is foreseeable that these interests could be a means through which Applicant could be subjected to foreign influence. Applicant's property was once owned by his father, who held prominent positions in Pakistan's military and government in the past. The fact that his father left government service in 1984 or 1985 lessens the concern somewhat, but his father's service is a matter of historical record. Furthermore, Applicant's ownership of the property is a matter of official record in Pakistan. Applicant maintains an ID card issued by the government of Pakistan so that he can conduct financial transactions in Pakistan. While he does so because it is required by Pakistan's laws and not because he seeks to maintain official recognition of his Pakistani origin, the ID card is a means through which he could come to the attention of persons in Pakistan interested in obtaining protected U.S. information. As long as Applicant owns the property, he can be expected to contact his cousin and rely on her to deal with it for him. AGs ¶ 7(a), 7(b), and 7(e) are established.

The following four mitigating conditions under AG ¶ 8 warrant some discussion in this case:

(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; 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.

Concerning AG ¶ 8(a), although Pakistan has been designated as a major non-NATO ally by the United States, Pakistan has not always acted in U.S. interests, as evidenced by its failure to restrict the Afghan Taliban and Haqqani Network from operating in Pakistan in Pakistan-based safe havens. Pakistan remains at serious risk of terrorist activity throughout its borders, and the country has a problematic human rights record. There is a lack of government accountability, and abuses often go unpunished, fostering a culture of impunity among perpetrators, whether official or unofficial. AG ¶ 8(a) does not apply.

In evaluating whether Applicant has “such deep and longstanding relationships and loyalties in the United States” to trigger AG ¶ 8(b) in mitigation, it is noted that Applicant has not exhibited or expressed any preference for Pakistan over the United States. He served as an officer in Pakistan’s military decades ago, but primarily because he wanted to pursue his engineering degree at a college funded in part by the U.S. military. Some of his instructors were active duty members of the United States military. Applicant earned his master’s degree in the United States. He and his spouse, both natives of Pakistan, chose to make their permanent home in the United States. They became naturalized U.S. citizens, and their three children were born and educated in the United States.

Applicant has operated his own consulting business in the United States since about 1984. In June 2004, he began contributing to the U.S. defense effort as a contractor to a federally-funded laboratory. He worked there with a secret security clearance until August 2012, when he resigned because the company no longer wanted to pay him as a business. Since then, he has worked as a contractor at another laboratory with DOD contracts, and maintained his security clearance eligibility.

In addition to his work income, Applicant has about \$100,000 in an individual retirement account in the United States. He and his spouse own their home, which they purchased around July 1996. They have about \$1 million in equity in the property, which has a current value of approximately \$1.5 million. There is no indication that Applicant plans to return to Pakistan to live. The home gifted to him by his father is up for sale. His family ties to Pakistan at this point are limited to the cousin overseeing his property for him. Applicant’s spouse, children, and sisters are all resident citizens of the United States. With the death of his father in 2018 and the settlement of his father’s estate in 2019,

Applicant does not currently have any plans to travel to Pakistan in the future. AG ¶ 8(b) has some applicability.

AG ¶ 8(c) is established in mitigation of the contacts he had with his stepmother and stepbrothers when he was in contact with them. While his communications with his cousin may be infrequent, they cannot fairly be deemed casual because they involve his substantial property asset in Pakistan. AG ¶ 8(c) does not apply to his contacts with his cousin.

AG ¶ 8(f) applies to Applicant's and his spouse's bank deposits in Pakistan which total less than \$10,000. However, the value of their real estate assets in Pakistan is considerable, even when compared to their U.S. interests. Applicant and his spouse have about \$1 million in equity in their home in the United States. Apart from a \$100,000 individual retirement account, Applicant did indicate that he holds other assets. I cannot speculate as to the extent of any savings or checking assets in the United States. Applicant also provided no details about his current income, either from his work in the United States or from his rented-out units in Pakistan. He testified that it makes no economic sense to continue to rent out the property in Pakistan. In the fall of 2021, he placed the property on the market at an asking price of more than \$2 million. His spouse is not interested in selling her two plots of land now worth between \$250,000 and \$300,000.

In some sense, these foreign real estate assets can be considered routine. There is no indication that Applicant has any sentimental tie to the home that his father had gifted him in 2016. At present, Applicant is not willing to accept less than the market value of \$2 million for his house in Pakistan. Applicant acquired the property from his father in 2016, so after he completed his August 2015 SF 86, which placed him on notice that the DOD was concerned about foreign financial assets. There is no evidence that he tried to sell the property at that time. Instead, with his cousin's assistance, he had the property renovated into two rental units and obtained tenants. He listed the house for sale only recently, in the fall of 2021. He put the house on the market well after he received the SOR in January 2020. His actions do not suggest that the asset is of no or minimal importance to him. AG ¶ 8(f) does not apply to his and his spouse's foreign real estate assets. As long as Applicant continues to retain ownership of the house, he is likely to have ongoing contact with his cousin. The foreign influence security concerns are only partially 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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in 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 the granting or continuing of national security clearance eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the [pertinent] guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis.

A guideline B adjudication is not a judgment on an applicant's character or loyalty to the United States. It is a determination as to whether an applicant's circumstances foreseeably present a security risk. See e.g., ISCR Case No. 19-00831 at 5 (App. Bd. July 29, 2020). Applicant has not shown any disloyalty to the United States. He is a person of good character. His efforts to maintain contact with his father and to visit him annually or every other year show family loyalty, which is a positive character trait. Yet, his circumstances, as detailed above, are such that he could be placed in an untenable position of having to choose between competing interests.

Applicant has held a DOD secret clearance since approximately July 2005. There is no evidence that he has failed to comply with any security practices or procedures. That information weighs in his favor. At the same time, it does not compel the continuation of security clearance eligibility. The Appeal Board reiterated in ISCR 17-04278 that "[e]ven those persons with good security records can encounter circumstances in which they could be subjected to pressure for find themselves in a conflict between their own legitimate interests and the security interests of the U.S." It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Based on the evidence of record, it is not clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Subparagraph 1.c:	Withdrawn
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Subparagraph 1.h:
Subparagraph 1.i:

For Applicant
Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge