



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



In the matter of:	)	
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	)	ISCR Case: 19-03568
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan Olmos, Esquire, Department Counsel  
For Applicant: *Pro se*

September 21, 2022

**Decision**

ROSS, Wilford H., Administrative Judge:

Applicant has close and continuing relationships with family members in Pakistan. He has not shown that his relationships with family in Pakistan are such that it is unlikely he would be placed in a position of having to choose between the interests of a foreign individual or entity and the interests of the United States. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

**Statement of Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 15, 2018. (Item 4.) On March 6, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR 1) to Applicant, detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense 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*, effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on May 15, 2020, with explanations and six enclosures. He initially requested a hearing before an administrative judge. (Item 2.) The case was assigned to another administrative judge on March 23, 2021. On August 2, 2021, Applicant requested his case be decided on the written record in lieu of a hearing. (Item 3.) Pursuant to Applicant's request, the case was converted. On October 6, 2021, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 5, was provided to Applicant, who received the file on December 13, 2021.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information in a timely fashion. Department Counsel had no objection to the admission of the additional information, and it is admitted into evidence as Applicant Exhibit A. The case was assigned me on March 1, 2022. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

### **Procedural Rulings**

In the FORM, the Government requested I take administrative notice of certain facts relating to the Islamic Republic of Pakistan (Pakistan). Department Counsel provided a nine-page summary of the facts, supported by 15 Government documents pertaining to Pakistan, which I have collectively identified as Item 6. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Applicant Exhibit A consists of a statement from Applicant along with excerpts of press releases and images from the press office of the United States Embassy in Pakistan. He stated that the images "help to show that the country of Pakistan is safe to visit and live." These documents will also be discussed in the Findings of Fact.

### **Findings of Fact**

#### **Paragraph 1 (Guideline B - Foreign Influence)**

The Government alleges in this paragraph that Applicant is ineligible for national security eligibility because he has foreign connections that may 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.

Applicant admitted all four SOR allegations with explanations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 60 years old. He was born in Pakistan in 1962, entered the United States in 1990, and became a naturalized American citizen in 2009. He is married to his second wife, who is a Legal Permanent Resident. He has two American-born children from his first wife. He has a bachelor's degree and a master's degree, and has been employed by a defense contractor as an engineer since 2018. He wishes to obtain national security eligibility in connection with his employment. Applicant has not previously applied for national security eligibility. (Item 2 at 43-44; Item 4 at Sections 12, 13A, 17, 18, and 25.)

1.a and 1.b. Applicant has one brother and four sisters. His parents are deceased. All of his siblings live in Pakistan. Two of his sisters are married. His brother, who is disabled, lives with the other two sisters in the house that belonged to his parents. (Item 2 at 1-18.)

Applicant speaks with his brother, and the two sisters the brother lives with, on a weekly basis. He communicates with his other two sisters on a monthly basis. In Applicant Exhibit A he stated, "[W]hat is wrong if I am close to my family (Sibling)?" (Item 4 at Section 18.)

Applicant has visited Pakistan several times since becoming an American citizen. The last trip of which the Government has knowledge occurred in 2017. (Item 4 at Section 20C; Item 5 at 4.)

1.c and 1.d. Applicant admitted that he has been sending money to Pakistan for the support of his handicapped brother and the sisters he lives with since approximately 2004. None of the three of them are employed. He sent the money to one of his brothers-in-law until he passed away in 2018. Applicant then began sending the money to his nephew. Applicant provided financial records showing he sent approximately \$3,600 to Pakistan in 2020. In Applicant Exhibit A he stated, "{W}hat is wrong if I am sending money to my family for medical reason?" He also stated, "I am the primary provider for my family that still resides in Pakistan, and this is an important role that my family needs me to continue in order for them to sustain a proper livelihood." (Item 2 at 21-39; Item 5 at 3-4.)

## **Pakistan**

I take administrative notice of the facts set forth in Item 6. Pakistan is a parliamentary federal republic, created in 1947 after British India was partitioned when the British government granted India its independence. Pakistan was created for the Moslem population of the Indian sub-continent. Its population is about 170 million. After September 11, 2001, Pakistan reassessed its relations with the Taliban and supported the U.S. and international coalition in its efforts to remove the Taliban from power. Many Islamic extremists and terrorists are known to inhabit parts of Pakistan, leading to a

growth of their insurgency. Although Pakistan has intensified its efforts to deal with the violence and terrorists, the country continues to experience serious problems. The U.S. Department of State confirms that many border cities are known as safe havens for terrorists. Numerous suicide bombings and kidnappings have taken place over many years. Human rights violations continue to be a significant problem, as killings, torture, and disappearances remain prevalent. The Pakistani government maintains domestic intelligence surveillance activities. The U.S. government warns Americans against travel to Pakistan, including specific concerns about travel to the city where Applicant's family lives. (Item 6 at Attachment VIII.)

Applicant Exhibit A contains several photographs and accompanying descriptions from the press office of the United States Embassy in Pakistan dating from September 7, 2021, through December 2, 2021. Applicant argues that these documents show that Pakistan is a safe place to visit and live. The subjects involve such normal diplomatic activities as military-to-military relations, support for law enforcement, and improvement of economic and cultural ties between the two countries. All of the press releases referenced by Applicant are available on the embassy's website, <https://pk.usembassy.gov/news-events/>.

## **Mitigation**

Applicant stated the following in Applicant Exhibit A:

I have been in this country for more than 30 years. During this time, I worked very hard to get complete my education and earn prominent employment in US.

Any background review of mine will show you that I have been a [sic] upright, model, law abiding citizen of the US.

My Pakistani origin does not and should not automatically disqualify my [sic] in any way and include me as being associated with any illegal activities.

Applicant has received letters of commendation and appreciation for his volunteer work in his community. (Item 2 at 40-42.)

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. **Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."** (Emphasis supplied.) See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Paragraph 1 (Guideline B – Foreign Influence)

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

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

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant is originally from Pakistan and five of his family members reside there. He sends money to Pakistan to help support several members of his family. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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; and

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

The Government is not alleging that Applicant is anything other than a conscientious and patriotic American citizen and member of the defense industry. However, he has substantial family ties to Pakistan. He admits to weekly to monthly contact with his four sisters and one brother who continue to live in Pakistan. For over fifteen years he has sent money to his family members in Pakistan for their support.

There is little evidence in the record concerning Applicant's connections to the United States. I have considered the fact that he has lived here for over 30 years and that he has been a citizen for over ten years. I have also considered the facts of his long-term employment in the United States, his education here, and his volunteer work. Finally, I have considered the fact that his wife is a Legal Permanent Resident and his children are native-born American citizens.

I have considered both the Government's administrative notice documents and Applicant's documentation found in Applicant Exhibit A. The documents show that the United States and Pakistan are engaged in normal diplomatic relations between countries. However, his exhibit does not overcome the State Department's warnings about travel to Pakistan in general, and specifically travel to his home town.

The DOHA Appeal Board has repeatedly stated that the mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that 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. 03-02382 at 5 (App. Bd. Feb. 15, 2006; ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001)). Given Applicant's strong family connections, the current state of the record, and also considering Pakistan's human rights record and State Department travel warnings, Applicant has not met his burden of mitigating the security concerns under Guideline B. Accordingly, Paragraph 1 is found against Applicant.

## **Whole-Person Concept**

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

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

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant did not provide sufficient evidence to overcome the facts of his deep and abiding ties to family members in Pakistan. The potential for pressure, exploitation, or duress has not been resolved. Overall, the evidence creates substantial doubt as to Applicant's eligibility, and suitability for a security clearance. Applicant has not met his burden to mitigate the security concerns arising under the guideline for foreign influence.

## **Formal Findings**

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant



## **Conclusion**

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

Wilford H. Ross  
Administrative Judge