



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



In the matter of: )  
)  
) ISCR Case No. 20-03429  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: Daniel P. Meyer, Esq.

09/29/2022

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**Decision**

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MURPHY, Braden M., Administrative Judge:

The Government alleged Guideline B foreign influence security concerns due Applicant’s family connections to Pakistan and his personal connection to an Iraqi friend. Applicant provided sufficient evidence in mitigation and under the whole-person concept to mitigate those security concerns. Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 21, 2019. On May 19, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under foreign influence. The DOD CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on July 7, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on March 2, 2022. On April 19, 2022, DOHA issued a notice scheduling the hearing for May 6, 2022, to occur virtually through an online platform.

I convened the hearing as scheduled. Government Exhibits (GE) 1 and 2 were identified and admitted in evidence without objection. Applicant's Exhibits (AE) A through J, all of which were provided with his Answer to the SOR, were offered again at hearing, marked, and admitted without objection. Applicant also testified. DOHA received the hearing transcript (Tr.) on May 16, 2022.

### **Requests for Administrative Notice**

The Government submitted written requests that I take administrative notice of certain facts about Pakistan (Administrative Notice (AN) I) and Iraq (AN II). Without objection, I have taken administrative notice of certain facts contained in the requests that are supported by source documents from official U.S. Government publications. Where appropriate, I have taken notice of updated and current information from the State Department website, consistent with my obligation to make assessments based on timely information in cases involving foreign influence. ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.") As appropriate, these facts are summarized in the Findings of Fact, below.

Applicant also requested that I consider certain decisions issued by the DOHA Appeal Board and by DOHA administrative judges, and I have done so. (Hearing Exhibit (HE) IV).

### **Amendment to the Statement of Reasons**

In the SOR as presented, SOR ¶¶ 1.a and 1.b both referenced multiple family members. SOR ¶ 1.b also referenced unidentified friends. At the conclusion of the hearing, I amended SOR ¶¶ 1.a and 1.b *sua sponte* to separate the references to each family member for purposes of clarity, without objection. (Tr. 90-91)

SOR ¶ 1.a references Applicant's mother and a cousin. It is now amended as SOR ¶¶ 1.a.1 (mother) and 1.a.2 (cousin).

SOR ¶ 1.b references Applicant's sister, one uncle, aunts, and cousins in Pakistan, as well as friends who live there. It is now amended as SOR ¶¶ 1.b.1 (sister), 1.b.2 (uncle), 1.b.3 (aunts), 1.b.4 (cousins), and 1.b.5 (friends).

### **Findings of Fact**

In response to the original SOR, Applicant admitted SOR ¶¶ 1.b and 1.c, and he denied SOR ¶¶ 1.a and 1.d, all with explanations. He included a narrative statement

with his Answer. Applicant's admissions and other statements are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He was born in Pakistan. He spent part of his childhood in the United Kingdom while his father was pursuing a graduate degree there. After returning to Pakistan, Applicant graduated from an international high school in Pakistan. He then earned his bachelor's degree at a university in Europe. (Answer; AE C; Tr. 37-40)

Applicant studied hospitality and business management, and that was his first career after college. He began working at a hotel in Europe and then moved to the United States in 2007 at age 23 for a management training program with a major American hotel brand. (Answer; AE C; Tr. 39-40)

In 2012, Applicant changed careers and began a career in banking. He joined a major U.S. bank, initially in the sales and service field. In 2016, he earned a master's degree in business administration (MBA) through an executive program. Between 2012 and 2017, he held two jobs, one with a bank, and one with a resort. In early 2020, he transitioned to investment banking. Since March 2021, he has worked for another bank as a licensed investment advisor. He has applied for a clearance through conditional employment with a large accounting firm. He has not had a clearance before. (Answer; AE C, AE E; GE 1; Tr. 8, 20, 34, 81-84)

Applicant married in Pakistan in 2008. He and his wife, a U.S. citizen, later moved to the United States. He obtained permanent U.S. residency through his wife in 2009. They separated in 2013. Applicant applied for U.S. citizenship in 2014, and became a U.S. citizen in January 2015. He and his wife divorced in 2018. They had no children. (GE 1 at 9-10, 25-26; Tr. 41-43; AE A)

Applicant's mother is a citizen of Pakistan residing in the United States. (SOR ¶ 1.a.1) She has been a permanent U.S. resident since 2020, and she lives with Applicant. He described their relationship as "very close." (Answer; AE D, AE F; Tr. 19, 24, 46-47, 50)

Applicant's mother went to Pakistan about three months before the hearing, with Applicant. She still owns a home in Pakistan. Applicant's sister lives in the home also. Applicant estimated that the home in Pakistan is valued at several hundred thousand U.S. dollars. He said if he inherits the home after his mother dies, he would sell it or give the home to his sister. Applicant and his mother opened a bank account in Pakistan after his father died. They closed the account a year later. (Tr. 45-49, 51-52, 85, 89) (The date of Applicant's father's death is either 9/19/2014 (GE 1 at 27) or 2017 (Tr. 48), but whichever is correct it was several years ago).

Applicant owns his own home in the U.S. He estimated the value at several hundred thousand dollars. He has significant equity in the home, and knows how much he owes on the mortgage. He owns no property in Pakistan. (Tr. 43-44; AE I)

SOR ¶ 1.a.2 alleges that Applicant has a cousin, C1, who is a citizen of Pakistan residing in the United States. Applicant stated that his cousin is now a U.S. citizen, and he lives in a large U.S. city with his family. Applicant speaks to this cousin a few times a year. C1's parents live in Pakistan and he goes to Pakistan to visit them. (Answer; AE H; Tr. 24, 54-57)

Applicant's sister, age 37, lives in Pakistan. (SOR ¶ 1.b.1) She is not married and has no children. (Tr. 85) She is a dress designer. She has visited the U.S. in the past, but not recently, due to COVID-19 travel restrictions. (Tr. 25) Applicant speaks with her several times a month, and considers them to be close. His sister came to live with Applicant in the U.S. for a time but preferred what Applicant called the "luxurious" lifestyle she leads in Pakistan, with drivers and maids. (AE G, Tr. 57-62)

Applicant has numerous aunts in Pakistan. (SOR ¶ 1.b.3) He has three maternal aunts in Pakistan. He has contact with one of them a few times a year. He has not seen or spoken to the other two aunts in several years. He has one paternal aunt in Pakistan but they have no contact. One more maternal aunt is now a citizen and resident of the United States, as are her children, Applicant's cousins. (AE G; Tr. 38, 67-68)

Applicant has ten maternal cousins. Five of them are citizens and residents of the U.S. Five of them live in Pakistan. (SOR ¶ 1.b.4) He is close to one of his U.S. cousins but has little contact with any of the others. They have some contact for holiday good wishes. (AE G; Tr. 68-76)

Applicant also has Pakistani friends. (SOR ¶ 1.b.5) Most of them live in the U.S. His interaction with them is brief, and often only on birthdays. (Tr. 25) He testified about one friend in Pakistan, S, who has a construction business, and another friend, A, who owns a restaurant. He saw both of them on his recent visit to Pakistan. (Tr. 76-78)

SOR ¶ 1.c concerns an uncle (U1) (also SOR ¶ 1.b.2), who is a retired officer in the Pakistan military. (GE 1 at 34) Applicant has limited contact with him, mostly on holidays and birthdays. (AE G) Applicant said U1, his late father's brother, does not get along with Applicant's mother. He retired in 2005. He now lives in the family's village, and manages his farm. Applicant sees U1 at family events in Pakistan. (Tr. 26-27, 53-54, 78-79, 86-87)

Applicant has other uncles in Pakistan, but he has little to no contact with them. (Tr. 26, 64-66, 88) If one of these uncles is referenced in SOR ¶ 1.b.2 instead of the retired military officer, this is not sufficiently clear.

On his SCA, Applicant disclosed yearly travel to Pakistan between 2012 and 2019. (GE 1 at 61-62) He most recently visited Pakistan with his mother in February

2022 for about three weeks. He stayed with his sister at her home, which their mother still owns. He briefly saw one of his uncles once (his father's younger brother) and briefly saw the cousin with whom he is close and who is a U.S. citizen who was visiting Pakistan at the time. He did not see his other cousins. (Tr. 62-64)

Applicant testified that in his current job, he has reporting and debriefing requirements when he travels overseas. He has been through training and understands the importance of doing so. (Tr. 20-21, 33-34)

SOR ¶ 1.d concerns a friend of Applicant's, an Iraqi citizen residing in the United States. Applicant disclosed her on his SCA because she was a bank client at the time, and he wanted to be as honest as possible. They have not been in touch in "a very long time." (Tr. 28) They were never in a romantic relationship. He knows that she is married and lives in the U.S. He did not want to discuss their professional banking relationship out of respect for her privacy. She contacted him three months before the hearing seeking a copy of her recent bank statement. (Tr. 28, 29, 79-81)

Applicant testified that he is a proud American. He loves "to show that he comes from the greatest country in the world." He "would not think twice" about giving his life for the United States. He would not compromise its sovereignty or integrity. In working for a financial institution, he understands the importance of confidentiality, as well as adherence to rules and regulations, including "providing no favors to anyone under any circumstances." (Tr. 29-32, 35-37) He is a registered voter in his state. (AE A)

Applicant is well-regarded at work and is considered a "top performer." (AE J) Mr. B, an employee of his prospective employer, also a personal friend, attested to Applicant's loyalty to the U.S., as well as to his professional skills. Mr. B recruited Applicant to his prospective position. (AE J)

Applicant's former supervisor, F, has known him since 2014. F attested to Applicant's "tremendous growth" both professionally and as a human being. He is a team player, well-informed, a star performer, and is always willing to assist his peers and mentors. F has an enduring respect for Applicant's work ethic and problem-solving skills. (AE J)

A personal reference, Dr. H, regards Applicant as honest, dependable, and respectful. He is helpful, supportive, cheerful, reliable, and trustworthy. Applicant has always been grateful for the opportunity to build his life and future in the United States. (AE J)

### **The Islamic Republic of Pakistan (Pakistan): (AN I)**

Pakistan is a federal parliamentary republic. The prime minister is head of government, and the president is head of state. The country has endured direct military rule for nearly half of its time as an independent nation. The United States has had diplomatic relations with Pakistan since Pakistan's creation in 1947. Their relationship

has been guided by their common interests in a peaceful, stable, and prosperous region.

The U.S. State Department currently advises American citizens to reconsider travel to Pakistan (Level 3) due to COVID-19, the risk of terrorism, and sectarian violence. The United States remains concerned about the continued presence of terrorist and other extremist groups in Pakistan. 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. Terrorists may attack with little or no warning, targeting transportation hubs, markets, shopping malls, military installations, airports, universities, tourist locations, schools, hospitals, places of worship, and government facilities. Terrorists have targeted U.S. diplomats and diplomatic facilities in the past.

The State Department's most recent human-rights report on Pakistan reflects the reported commission of human rights violations by elements within Pakistan and the Pakistani government. The most serious human-rights problems in Pakistan include extrajudicial and targeted killings, disappearances, torture, the lack of rule of law, and sectarian violence. Government corruption is a serious problem, and the lack of accountability and failure to prosecute these abuses has led to a culture of impunity.

#### **Iraq: (AN II)**

I have read and considered the facts set forth in AN II, concerning Iraq. The only allegation concerning Applicant's connections to Iraq which makes those facts relevant here is SOR ¶ 1.d. SOR ¶ 1.d concerns a banking client of Applicant's who is an Iraqi citizen and U.S. resident, a woman who Applicant disclosed on his SCA out of the abundance of caution. As addressed in the Analysis section, below, their contact is largely professional and infrequent, and not an ongoing security concern. I therefore see little reason to discuss the facts in AN II about Iraq any further.

#### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Exec. Or. 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.”

## **Analysis**

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

AG ¶ 6 expresses the security concern regarding foreign influence:

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 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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; and

(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.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is 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).

The serious human-rights issues, the ongoing threat of terrorism there, and the governments’ inability to stem corruption in Pakistan all create a “heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” They also create a potential conflict of interest. AG ¶¶ 7(a), 7(b), and 7(c) have been raised by the evidence.

Applicant’s mother (SOR ¶ 1.a.1) is a citizen of Pakistan, though she is also a permanent resident of the United States. She also lives with Applicant. AG ¶¶ 7(a), 7(b), and 7(c) all apply.

Applicant’s cousin in the United States (SOR ¶ 1.a.2) is now a U.S. citizen. No disqualifying conditions apply to him.

Applicant has a sister (SOR ¶ 1.b.1), several aunts (SOR ¶ 1.b.3) and cousins (SOR ¶ 1.b.4) who are citizens and residents of Pakistan. AG ¶¶ 7(a), 7(b) both apply to them.

AG ¶¶ 7(a) and 7(b) also apply to Applicant’s uncle, U1, who is a retired Pakistani military officer, as well as a citizen and resident of Pakistan. (SOR ¶ 1.c and



SOR ¶ 1.b.2) SOR ¶ 1.b.2 might refer to another uncle in Pakistan, though it is not clear. Therefore, I find that U1 is alleged twice, and consider SOR ¶ 1.b.2 to be duplicative.

SOR ¶ 1.b.5 concerns unspecified friends of Applicant's who are citizens and residents of Pakistan. Applicant testified that there are two such friends with whom he keeps in some contact: S and A, both of whom he saw on recent visit to Pakistan. AG ¶¶ 7(a) and 7(b) apply to them.

SOR ¶ 1.d concerns a banking client of Applicant's who is an Iraqi citizen residing in the United States. They appear to have been friends at one point in time, but their limited contact is now only professional in nature, as well as infrequent. Applicant disclosed the woman on his 2019 SCA out of the abundance of caution. Given the nature of their interaction, I find that AG ¶¶ 7(a) and 7(b) do not apply, and to the extent that they do apply, SOR ¶ 1.d is mitigated under AG ¶ 8(c).

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant has several immediate family members who are citizens and residents of India and has two sisters in Pakistan. In light of the administratively noticed facts about Pakistan and the heightened risk shown, AG ¶ 8(a) has limited applicability.

Applicant lives with his mother in the United States. He visits his family in Pakistan, specifically his sister, on a yearly basis, and speaks to her frequently. His sister lives in a home in Pakistan that their mother owns. It cannot be said that his relationships with his immediate family members are casual. AG ¶ 8(c) does not apply to his mother and sister.

Applicant's contacts with his extended family members in Pakistan, however, are significantly less frequent. He has limited contact with his uncle, U1 (or other uncles, whether specifically alleged or otherwise), with his aunts in Pakistan, and with his cousins there. AG ¶ 8(c) applies to them. It also applies to his two friends in Pakistan. He saw them on his recent visit but no more frequent contact is evident by the record evidence.

The evidence in support of AG ¶ 8(b), however, is significant. Applicant has lived in the United States for many years. He owns property here and his life is here. He has an established career in the banking industry. This brings with it significant experience with and understanding not only of rules and regulations generally, but also of the specific concepts of confidentiality, privacy and the protection of sensitive information. In addition, he has experience in that industry with the practice and importance of briefing and debriefing before and after his foreign travels. These are all significant factors in Applicant's favor. I also had the opportunity to view Applicant's demeanor during the hearing and I found him to be a credible witness. Applicant also presented significant and strong whole-person character evidence through his reference letters. Those references all attested to Applicant's honesty, dedication, work ethic, and pride in the life and opportunities he has here in the United States. While Applicant has continuing family ties to Pakistan through his mother, his sister and his yearly visits, I am nonetheless confident that given his deep and longstanding relationships and loyalties in the United States, he can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

### **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(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments

under Guideline B in my whole-person analysis. I observed Applicant's demeanor while he testified. He was an impressive and candid witness. He presented a strong case in mitigation and in support of his request for access to classified information.

After carefully weighing the evidence, both favorable and unfavorable, and considering the whole-person factors set forth in AG ¶ 2(d), the foreign influence security concerns about Applicant's family connections to Pakistan are mitigated. Security concerns about his connections to Iraq are also resolved. The record evidence therefore leaves me with no questions or doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under Guideline B, foreign influence.

### **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: FOR APPLICANT

Subparagraphs 1.a-1.d: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

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Braden M. Murphy  
Administrative Judge