



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



In the matter of:)
)
-----) ISCR Case No. 13-00622
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

12/13/2013

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s spouse is close to her father and mother, who are residents and citizens of Pakistan. She has frequent contact with her parents. Applicant’s father-in-law was a high-level Pakistan Government official. He turned in his Pakistani National Identity Card (NIC) to his employer. Although foreign preference concerns are mitigated, foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On June 18, 2012, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On August 9, 2013, the Department of Defense (DOD) issued a statement of reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence) and C (foreign preference) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. (HE 2)

On September 4, 2013, Applicant responded to the SOR. (HE 3) On October 16, 2013, Department Counsel was prepared to proceed. On October 21, 2013, DOHA assigned the case to me. On November 4, 2013, DOHA sent notice of the hearing, setting the hearing on November 25, 2013. The hearing was held as scheduled. I received the transcript of the hearing on December 3, 2013.

Procedural Rulings

At the hearing, Department Counsel offered two exhibits, and Applicant offered six exhibits. (Tr. 18-22, 27-29; GE 1-2; AE A-F) Applicant objected to information in GE 1 and 2 alleging that he had ongoing contacts with the former Pakistan Government employees in SOR ¶¶ 1.a and 1.k. (Tr. 19-22; GE 1-2) His father-in-law is retired from Pakistan Government service, elderly, and in poor health. (Tr. 21) I overruled Applicant's objection and admitted Department Counsel's documents into evidence; however, I advised Applicant that he could present evidence about his current connections to Pakistan to reduce the weight to be accorded to the information in the documents. (GE 1-2; Tr. 22) Department Counsel did not object to Applicant's exhibits, and I admitted them into evidence. (Tr. 28-29; AE A-F)

Department Counsel requested administrative notice (AN) of facts concerning Pakistan. (Tr. 22; AN Request) Department Counsel provided supporting documents to show detail and context for those facts. (AN Request) Applicant objected because his current connections with Pakistan are limited; his connections to the United States are substantial; his contributions to the United States are significant; and he has good law-abiding character and integrity. (Tr. 24-26) There was no objection about the accuracy of the AN materials, and I granted Department Counsel's request. (Tr. 24-26)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a to 1.i, and he provided mitigating information. (HE 3) He denied the allegation in SOR ¶ 2.a. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 51-year-old linguist, who seeks employment requiring a security clearance. (Tr. 6; AE A-F) He was born in Pakistan, and his father died when he was four years old. (Tr. 29) In 1979, he graduated from high school, and in 1984, he graduated with a Bachelor of Arts degree from a college run by the Pakistan Government. (Tr. 7-8, 30)

In 1992, Applicant married. (Tr. 44, 52) In 1999, Applicant, his spouse, and two children entered the United States from Pakistan. (Tr. 20, 23-24, 40) In 2000, he claimed political asylum in the United States. (Tr. 40) He has a son, who is currently attending college in the United States, and he has an 18-year-old daughter, who lives in the United States. (Tr. 24)

In December 2006, Applicant visited Pakistan for about 10 days with his spouse and children because his mother-in-law was ill. (Tr. 44-45) This was Applicant's only trip to Pakistan after leaving in 1999. (Tr. 45-46) In 2009, his spouse traveled to Pakistan for a wedding. (Tr. 46) In January 2011, Applicant was naturalized as a U.S. citizen. (GE 1 at 7) His spouse and children were also naturalized as U.S. citizens. (Tr. 46; GE 1)

Applicant's mother is a U.S. citizen and resident. (Tr. 52) Applicant has two brothers. (Tr. 52) One brother is a permanent resident of the United States, and the other brother is an Australian citizen. (Tr. 52-54)

Applicant has three sisters. (Tr. 55) One is a U.S. citizen, and two are U.S. permanent residents. (Tr. 55-56) All of his siblings reside in either the United States or Australia. Three of his siblings are either married to U.S. citizens or U.S. permanent residents. (Tr. 55-57) He has numerous nieces and nephews that are either U.S. citizens or U.S. permanent residents. (Tr. 55-57)

For several years after arriving in the United States, Applicant was a travel agent. (Tr. 48, 71) In June 2012, he began his current employment as a linguist. (Tr. 49) In January 2013, he was deployed to Afghanistan. (Tr. 50) In about May 2013, he returned to the United States. (Tr. 51) He currently manages a restaurant or lounge. (Tr. 51)

¹To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information. At Applicant's request and with the concurrence of Department Counsel, Applicant's opening statement and comments during his discussion about admissibility of evidence were accepted as substantive evidence. (Tr. 26)

Foreign Influence

Applicant served in the Pakistan military for 16 years and prematurely retired as an officer in 1995, because of lack of additional promotion opportunities. (Tr. 31, 35, 44) While in the Pakistan military, he had substantial responsibility, was assigned to a combat zone, held a Pakistan security clearance, and was involved in dangerous duties involving suppression of terrorists and criminals. (Tr. 24, 32, 41-43; SOR ¶ 1.i; SOR response) Upon retirement from the Pakistan military, he received a lump-sum severance from the Pakistan Government. (Tr. 68) He is not receiving a monthly retirement pension from Pakistan. (Tr. 68) He is not entitled to receive a retirement or old age pension from the Pakistan Government. (Tr. 69) From 1995 to 1999, he worked in the private sector providing security in Pakistan. (Tr. 36) After he retired from Pakistan Government service, he was worried that dangerous persons might retaliate against him for his military service. (Tr. 24)

When Applicant was growing up in Pakistan, he lived with his uncle, who currently lives in Pakistan. (Tr. 30) Applicant's uncle had a stroke, and Applicant rarely communicates with him. (Tr. 30)

Applicant has a friend since childhood, who is a retired Pakistani military officer. (SOR ¶ 1.j) He has not spoken to him for two years. (Tr. 21, 37-38; GE 2 at 16) He has three friends who were Pakistani officers and now they are U.S. citizens, living in the United States. (Tr. 38-40; SOR ¶ 1.k)

Applicant's spouse has one sister and two brothers. One sister and one brother live in Pakistan and are Pakistani citizens. (Tr. 61-65; SOR ¶¶ 1.c and 1.d) They are married to Pakistani citizens and residents. (Tr. 61-62) Applicant's communications with his spouse's siblings are less frequent than about every six months. (GE 2) One brother, who is married to a Pakistani citizen, lives in the United States. (Tr. 64; SOR ¶¶ 1.g and 1.h) Although Applicant's spouse communicates with her siblings in Pakistan, Applicant did not specify the frequency of those communications. (Tr. 61-65)

Applicant's mother-in-law and father-in-law are citizens and residents of Pakistan. (Tr. 57, 60; SOR ¶ 1.a) His father-in-law held a high-level Pakistan security clearance, and before retiring, held an extremely sensitive and influential Pakistan Government position. (Tr. 20, 57, 70) He retired from this position about 20 years ago. (Tr. 20-21, 57-58) He is in his late 70s. (Tr. 20-21, 58) Although Applicant indicated in June 2012 that he communicated with his mother-in-law and father-in-law about once a month, he now communicates with his father-in-law about once every six months. (Tr. 59; GE 2) His spouse communicates with her parents every day or every two days. (Tr. 60, 69) He does not discuss his employment with his father-in-law. (Tr. 20)

Applicant does not have any property or bank accounts in Pakistan. (Tr. 65) He is willing to serve as a linguist in very dangerous situations, such as with U.S. Army special forces in Afghanistan, and he is a loyal and faithful U.S. citizen. (Tr. 26)

Foreign Preference

In 2007, Applicant was issued a Pakistani NIC, which did not expire until 2016. (Tr. 47; SOR ¶ 2.a) He returned his Pakistani NIC and Pakistani passports to his employer. (Tr. 47; SOR response) He also renounced his Pakistan citizenship. (Tr. 47) He said all of his loyalties are with the United States. (Tr. 72)

Pakistan

Pakistan is a parliamentary federal republic with a population of more than 167 million people. After September 11, 2001, Pakistan supported the United States and an international coalition in Operation Enduring Freedom to remove the Taliban from power in Pakistan. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan, the Khyber Pakhtunkhwa (Kpk), and in the Balochistan Province, which borders Iran and Pakistan.

The Taliban, Lashkar e-Tayyiba (LT), the Haqqani Network, and al Qaida operate in Pakistan, and in some instances elements of the Pakistan Government may be covertly aiding these terrorist or anti-U.S. entities. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. It is likely that in November 2008 LT was responsible for the attack in Mumbai, which caused numerous casualties. The Haqqani Network attacked the U.S. Embassy in Kabul in September 2011. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Pakistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghanistan-Pakistan border. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to al Qaida and a number of foreign and Pakistan-based extremist groups. Al Qaida exploits the permissive operating environment to support the Afghanistan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Pakistan Taliban and other extremists groups, Al Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies. Al Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistan civilians and security force personnel.

The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Since 2007, several American citizens present in Pakistan have been kidnapped for ransom or other personal reasons. The human rights situation in Pakistan remains poor. Extrajudicial killings, torture, and disappearances occur. Arbitrary arrests, governmental and police corruption is widespread, and the

Pakistan Government maintains several domestic intelligence agencies to monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicate that authorities use wiretaps and monitor mail, phones, and electronic messages without the requisite court approval. In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems. In the aftermath of Pakistan's development of nuclear weapons, the United States cut-off military aid to Pakistan for several years.

After September 11, 2001, Pakistan became allied with the United States in counterterrorism. Pakistan committed to elimination of terrorist camps on the Afghanistan-Pakistan border and sent thousands of troops and sustained hundreds of casualties in this effort. Overall, Pakistan has intensified counterinsurgency efforts and demonstrated determination and persistence in combating militants. The United States is engaging in a substantial effort to bolster Pakistan's military forces and security. In 2003, President Bush announced that the United States would provide Pakistan with \$3 billion in economic and military aid over the next five years beginning in 2005.

On May 1, 2011, U.S. special operations personnel raided a large compound in Pakistan and killed Osama bin Laden, the leader of al Qaida. The raid raised concerns that the Pakistan Government had knowingly permitted terrorists, militants, and insurgents to find safe havens in Pakistan.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the

possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (d) sharing 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.

Applicant was born and educated in Pakistan. He served in the Pakistan military for 16 years. His parents, spouse, siblings, children, and his spouse's parents, siblings, nieces, and nephews were born in Pakistan. Applicant's father died, and his mother, spouse, children, and most of his siblings moved to the United States. None of his siblings live in Pakistan. He has limited contacts with his in-laws living in Pakistan. He has friends with connections to Pakistan; however, his contacts with them are limited. Moreover, Applicant was of relatively low rank in the Pakistan military, and he left active duty in 1995. He is not receiving on-going pension payments from the Pakistan Government. None of the disqualifying conditions apply to SOR ¶¶ 1.c to 1.i, and these SOR paragraphs are mitigated.

AG ¶ 7(d) applies to SOR ¶¶ 1.a and 1.b. Applicant lives with his spouse in the United States. His spouse is close to her father and mother, who are residents and citizens of Pakistan. She communicates with her parents almost every day. She traveled to Pakistan when her mother was sick. Her father was a high-level Pakistan Government official, who held a security clearance and had access to very sensitive material.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse. "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). Although Applicant has limited contacts to his in-laws living in Pakistan, he has affection for his spouse, and she has affection for her family living in Pakistan. So an indirect, but important tie remains between Applicant and his in-laws living in Pakistan.

Indirect influence from Applicant's in-laws living in Pakistan, through Applicant's spouse to Applicant, could result in a security concern. Applicant's spouse's communications with her siblings living in Pakistan are not fully described in the record, and there is insufficient evidence to establish a security concern in regard to her siblings; however, her relationships with her parents living in Pakistan are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Her relationships with residents of Pakistan create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his spouse and her parents, who are in Pakistan. For example, if terrorists in Pakistan wanted to expose Applicant to coercion, they could exert pressure on his in-laws in Pakistan. Applicant would then be subject to indirect coercion through his spouse and classified information could potentially be compromised.

Applicant's spouse's possession of close family ties with her parents living in a dangerous country, such as Pakistan, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Pakistan with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his spouse's relationships with her family members living in Pakistan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his spouse's parents living in Pakistan, which is a dangerous country for anyone with a close link to the U.S. Government and classified material.

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). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Pakistan seek or have sought classified or economic information from or through Applicant, his spouse, or his in-laws living in Pakistan, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Pakistan has a significant problem with terrorism. Applicant's spouse's relationship with family members living in Pakistan creates a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist her family members in Pakistan by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's spouse's contacts with her family living in Pakistan. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation, and further inquiry is necessary about potential application of any mitigating conditions.

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

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and
- (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

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

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

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

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant's spouse has frequent contact with her parents, who are living in Pakistan. Her loyalty and connections to her family living in Pakistan are positive character traits. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his spouse's relationships with her relatives who are Pakistani citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. In 1999, Applicant, his spouse, and two children immigrated together to the United States from Pakistan. He has a son, who is currently attending college in the United States, and he has an 18-year-old daughter, who lives in the United States. He is now 51 years old. Applicant, his spouse, and two children are U.S. citizens, residing in the United States. When he took an oath and swore allegiance to the United States in 2011, as part of his naturalization as a U.S. citizen, and when he volunteered to serve in Afghanistan in a combat zone as a linguist, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his spouse's relationships with her family living in Pakistan. She frequently communicates with her family living in Pakistan. There is no evidence, however, that terrorists, criminals, the Pakistan Government, or those conducting espionage have approached or threatened Applicant, his spouse, or their family to coerce Applicant for classified or sensitive information.² As such, there is a reduced possibility that Applicant or his spouse's family living in Pakistan would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his family living in Pakistan is from terrorists and other lawless elements and not the Pakistan Government.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier

²There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic investment in Pakistan. Applicant's spouse's family in Pakistan will become potential targets of terrorists because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to Applicant's spouse's family from lawless elements in Pakistan.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant or his spouse's involvement with family members living in Pakistan. Applicant is not required to report his contacts with citizens or residents of Pakistan.

AG ¶ 8(f) has limited application because it is only available to mitigate security concerns arising under AG ¶ 7(e).³ Applicant does not have investments in Pakistan.

In sum, Applicant's spouse's connections to her parents living in Pakistan are significant. She is close to her parents and communicates with them almost every day. Her father held a high-level position in the Pakistan Government, including access to Pakistani classified information. Although Applicant's connections to the United States are strong, they are insufficient to outweigh his connections to his spouse. Under Appeal Board jurisprudence, her connections to citizens and residents of Pakistan are imputed to Applicant. Her connections to her parents in Pakistan raise an unmitigated foreign influence security concern under Guideline B.

Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, "when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10 describes one condition that could raise a security concern and may be disqualifying in Applicant's case. AG ¶ 10(a) provides, "(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport. . . ." The scope of AG ¶ 10 is not limited to the specifically enumerated disqualifying conditions and includes possession of a currently valid Pakistani NIC. In 2007, Applicant was issued a Pakistani NIC, which did not expire until 2016. He retained the Pakistani NIC after becoming a U.S. citizen in 2011. AG ¶ 10(a) applies.

AG ¶ 11 provides two conditions that could mitigate security concerns in this case: "(b) the individual has expressed a willingness to renounce dual citizenship;" and "(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

³AG ¶ 7(e) reads, "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation."

Applicant did not receive any benefits as a result of holding a NIC after becoming a U.S. citizen in 2011. He did not travel to Pakistan after becoming a U.S. citizen. He returned his Pakistani NIC and Pakistani passport to his employer before his hearing. He also renounced his Pakistan citizenship, and he emphasized all of his loyalties are with the United States. AG ¶¶ 11(b) and 11(e) apply and foreign preference concerns are 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 the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

The factors weighing towards approval of Applicant's security clearance are less substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations. When he was naturalized as a U.S. citizen, he swore allegiance to the United States. His spouse and two children are U.S. citizens and reside in the United States. His mother and most of his siblings live in the United States, and none of his immediate family lives in Pakistan. He volunteered to serve as a linguist with U.S. forces in Afghanistan. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant since a U.S. Government contractor began employing him in 2012.

A Guideline B decision concerning Pakistan must take into consideration the geopolitical situation and dangers there.⁴ Pakistan is a dangerous place because of violence from terrorists and other lawless elements. Terrorists continue to threaten the Pakistan Government, the interests of the United States, and those who cooperate and

⁴ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

assist the United States. The Pakistan Government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Pakistan Governments are allies in the war on terrorism. Pakistan and the United States have close relationships in diplomacy and trade. Pakistan and the United States have sometimes had profound policy disputes.

There are foreign influence security concerns arising from Applicant's spouse's parents living in Pakistan that warrant greater weight than his connections to the United States. Applicant's spouse's father and mother are Pakistan citizens and live in Pakistan. She frequently communicates with her father and mother. Her father was a high-level Pakistan Government official with access to sensitive Pakistan Government secrets. Although her father is elderly and ill, there was no persuasive evidence presented that he has ended all of his connections to the Pakistan Government. Her close connections to her family in Pakistan make Applicant more vulnerable as a target of coercion by lawless elements in Pakistan. Her family in Pakistan will be at a greater risk if his clearance is granted.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Although foreign preference concerns are mitigated, I conclude Applicant has not carried his burden and foreign influence concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c to 1.l:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge