



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



In the matter of: )  
)  
) ISCR Case No. 13-00641  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

07/08/2014

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline B, foreign influence. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On August 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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 adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on September 26, 2013, and requested a hearing before an administrative judge. I was assigned to the case on April 28, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 2, 2014. I convened the hearing as scheduled on June 10, 2014. The Government offered

exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant testified on his own behalf. He did not offer any exhibits, but I left the record open until June 24, 2014, to allow him to submit documents. He provided Applicant's Exhibit (AE) A through E, which were admitted into evidence without objection.<sup>1</sup> DOHA received the hearing transcript (Tr.) on June 18, 2014.

### **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan and Pakistan. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibits (HE) I and II. Applicant did not object, and I have taken administrative notice of the facts contained in HE I and II. The facts are summarized in the Findings of Fact, below.

### **Procedural Issues**

Department Counsel moved to amend the SOR to accurately reflect the citizenship and residency of Applicant's brother as stated in ¶ 1.d. The request is to change the SOR as follows: "Your brother is a citizen of Pakistan and a resident of Pakistan." Applicant had no objection and the motion was granted.

### **Findings of Fact**

Applicant admitted the allegations in the SOR as amended. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. He was born in Afghanistan in 1972 and lived there until 1982. His family then moved to Pakistan. In 1986, he and some of his family immigrated to the United States as refugees. From 1987 to 1989, Applicant attended high school, but only completed the ninth grade. He married his wife, who was born in Afghanistan, in 1991 in Pakistan. They have four children, two were born in Pakistan and two were born in the United States. He became a naturalized citizen of the United States in 1996. He worked as an assistant manager of a gas station for about ten years until he began working for a federal contractor in 2010. He has worked for his present employer since 2011.<sup>2</sup>

Applicant began working as a translator for the U.S. Government in 2011. He is deployed to Afghanistan for approximately six to seven months at a time working with U.S. forces, sometimes under dangerous conditions. He returns home after deployment

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<sup>1</sup> Hearing Exhibit III is Department Counsel's email memorandum indicating there was no objection to Applicant's exhibits.

<sup>2</sup> Tr. 21-24, 29, 60-62.

for several weeks before returning. In 2012, while serving at a base in Afghanistan, the base was attacked by a suicide bomber. There were casualties, but no deaths.<sup>3</sup>

Applicant's wife is a citizen of Afghanistan and resident of the United States. She moved to the U.S. in 2000. She does not work and is unable to read or write, so she cannot pass the citizenship examination. She is a permanent resident of the United States. She last visited Pakistan in 2010.<sup>4</sup>

Applicant's father was a driver for an American agency when he was living in Afghanistan. After the Soviet Union invasion in 1979, the agency closed its office. Applicant stated his father was receiving threats so his father moved Applicant and his two brothers to Pakistan as refugees. His mother was deceased and his sister stayed behind with relatives in Afghanistan. They planned on her joining them later. A few months later, she moved to Pakistan. Applicant was ten years old at the time. While in Pakistan, Applicant's father worked as a driver for the United Nations and later for a U.S. agency. After four years, Applicant's father applied for refugee status to immigrate to the United States. His sister married in approximately 1984 or 1985, and she remained in Pakistan for a period.<sup>5</sup>

Applicant traveled to Pakistan in 1988 to visit his sister and stayed about a month. He returned to Pakistan in 1989 to visit his family and in 1991 to marry his wife. His marriage was arranged. He returned in 2002 to visit his family and again in 2003. In 2010, Applicant, his wife, and their four children went to Pakistan and while there they visited Applicant's father, stepmother, and his wife's relatives. They stayed in Pakistan for about two months.<sup>6</sup>

In 1993, Applicant's older brother was living with him, his father, and his younger brother. His older brother was arrested in Canada for smuggling and possession of heroin. Applicant indicated he was unaware of the criminal activity, but was aware that his brother had purchased a car and clothing. His brother was working at a furniture factory at the time. His father was implicated in the criminal activity. His younger brother told Applicant that their father was ordered to be deported. Applicant's younger brother purchased their father a plane ticket to return to Pakistan before he was formally deported. The father never became a U.S. citizen, but had permanent residency status. The older brother was deported. The older brother returned to the United States at some point and was working for the Drug Enforcement Agency for a couple of months. Applicant stated he did not know the circumstances. His brother lived with Applicant before he returned to Pakistan. Applicant disclosed as part of his counterintelligence-focused security screening questionnaire that his younger brother had been coerced by

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<sup>3</sup> Tr. 73-74, 80-83.

<sup>4</sup> Tr. 23, 46, 87-88.

<sup>5</sup> Tr. 33-44.

<sup>6</sup> Tr. 46-49, 73-74, 80-81; GE 3, 4.

his stepmother to receive funds for the benefit of the family, presumably from the older brother. The younger brother was not arrested but was questioned on several occasions by federal authorities.<sup>7</sup>

Applicant and his younger brother purchased a home together in 1998, where both of their families lived. They sold this house in 2004 and purchased a new house. Applicant purchased his current residence in 2009 and lives there with his wife and children.<sup>8</sup>

Applicant's father is a citizen of Afghanistan and resides in Pakistan. Applicant contacts his father every three to four months when he is deployed. His last contact with his father was two weeks before his hearing. He has not visited his father while he has been in Afghanistan, but maintains contact with him. His stepmother is a citizen of Afghanistan. Applicant testified that his stepmother now lives in the United States with his younger brother. He stated that she has a "green card" but has only had it for three or four months. He stated that she has only been living in the United States for three months. It is unclear what her current status is if she has only been in the U.S. for the amount of time Applicant stated.<sup>9</sup>

Applicant's older brother is a citizen of Afghanistan and resides in Pakistan. Applicant has not had face-to-face contact with his brother since 2003. He visited him when he and his family returned to Pakistan in 2003. Applicant stated he has not had any contact with his older brother since he began working for his present employer.<sup>10</sup>

Applicant's mother-in-law and father-in-law are deceased. Applicant's wife has three brothers who are citizens of Afghanistan and reside in Pakistan. They are all married with children. They all own small businesses. Applicant's wife contacts them every other day by Skype. Sometimes she contacts them by telephone.<sup>11</sup>

Applicant's sister is a citizen of Afghanistan and a permanent resident of the United States. She has been in the United States less than five years. She is married and her husband is employed as a U.S. government contractor. He is also a citizen of Afghanistan and a permanent resident of the United States. His sister and her family went back to Pakistan to visit Applicant's father a few months ago. His sister also visited her husband's family while there. She has three sons and a daughter.<sup>12</sup>

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<sup>7</sup> Tr. 53-60; GE 4.

<sup>8</sup> Tr. 45, 50-53, 62-65.

<sup>9</sup> Tr. 27-28, 71-72, 88-89.

<sup>10</sup> Tr. 72, 90.

<sup>11</sup> Tr. 27, 75-78, 88.

<sup>12</sup> Tr. 90-93.

Applicant has two stepbrothers who are citizens of Afghanistan and residents of Pakistan. Applicant has contact with them every three to four months. They live with his father. One is a shop owner and the other a bookkeeper.<sup>13</sup>

Applicant has a cousin who is a citizen of Afghanistan and resides in Japan. Applicant visited him in Japan in 2003 to discuss potential business opportunities. His cousin has lived there for 15 to 20 years. Applicant has talked to him by telephone a few times over the years, but his last contact was three years ago.<sup>14</sup>

Applicant testified that he sends his father approximately \$400 to \$500 every four to five months. Applicant's wife sends \$200 to \$300 to her brothers in Pakistan every two to three months. She also sends gifts to both Applicant's family members and her family members in Pakistan.<sup>15</sup>

As part of his counterintelligence-focused security screen questionnaire, Applicant stated that he sent approximately \$8,000 over the past six years to his father in Pakistan. He now believes the amount to be closer to \$4,000 to \$5,000. The money was to be used to assist his father with living expenses. He sent his older brother approximately \$400 from 2009 until 2010. It was sent to help his brother who was struggling financially.<sup>16</sup>

Applicant's daughter sent money to Applicant's older brother in 2011. His brother contacted her to request money. He does not know what his older brother does for a living. His brother will contact Applicant's family every three to four months by telephone. He believes his daughter's last contact with his older brother was about a year ago.<sup>17</sup>

Applicant's father has owned a home in Afghanistan for approximately 45 years. Its estimated value is \$10,000. Applicant stated he has no financial interests in Afghanistan or Pakistan.<sup>18</sup>

Applicant stated he has worked hard with different military members while deployed. He has never done anything to bring shame to his work. He provided character statements describing him as a valued interpreter and professional who brings a level of cultural knowledge, personnel background, situational awareness, and

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<sup>13</sup> Tr. 93-94.

<sup>14</sup> Tr. 85-86, 94-95.

<sup>15</sup> Tr. 95-96, 99-100.

<sup>16</sup> Tr. 101-104; GE 4.

<sup>17</sup> Tr. 96-99.

<sup>18</sup> Tr. 100-101, 104.

comprehensive wealth of vocabulary to the mission that has proven to be invaluable. He is also described as a dedicated, respected member of the team, who has performed his duties admirably and has demonstrated an outstanding work ethic.<sup>19</sup>

## **Pakistan<sup>20</sup>**

Pakistan has areas within its borders that are safe havens for terrorist groups seeking to conduct domestic, regional, and global attacks. Terrorist groups exploit the inability of Pakistan's security agencies to fully control portions of its own territory to find refuge and plan operations. Taliban senior leaders continue to be based in Pakistan, which allows them to provide strategic guidance to the insurgency without fear for their safety.

The U.S. Department of State has concluded that, in 2012, Pakistan continued to experience significant terrorist violence, including sectarian attacks. Despite the Pakistani military's operations against terrorists groups, some were able to continue to operate within the country. Pakistan did not directly target the Afghan Taliban or the Haqqani Network, an extremist organization that operates with impunity. This group has staged attacks on Afghan and U.S. troops including the 2011 attack on the U.S. Embassy in Kabul, Afghanistan.

In 2011, U.S. special forces raided a large al-Qa'ida compound located in Pakistan and killed Osama bin Laden. The fact he was in Pakistan in a location that was in stark contrast to the surrounding residences, highlights that insurgents find safe havens in areas of Pakistan. The State Department advises U.S. citizens not to travel to Pakistan. Terrorists have demonstrated their willingness to attack targets where Americans are known to congregate or visit. There are numerous human rights problems in Pakistan.

## **Afghanistan<sup>21</sup>**

Afghanistan's central government's effectiveness has increased, but local governance remains weak and all levels of government are plagued with corruption. The convergence of insurgent, terrorist, and criminal networks is pervasive and constitutes a threat to Afghanistan's stability. These networks are often linked to corrupt government officials making it difficult to prove and prosecute.

Security in Afghanistan is challenged by armed groups, loosely allied with each other. The core insurgent group remains the Taliban movement. Different terrorist groups are operating from safe havens in Taliban-controlled areas on the Afghan side of the border. A major concern has been insider attacks. These attacks are carried out by

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<sup>19</sup> Tr. 29; AE A, B, C, D, E.

<sup>20</sup> HE II.

<sup>21</sup> HE I.

Afghan security personnel. There are also large vehicle-borne improvised explosive device attacks.

Afghanistan has significant human rights problems including credible reports of torture and abuse of detainees; widespread violence, including armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians; and societal discrimination against women and girls.

The U.S. State Department warns U.S. citizens against travel to Afghanistan and warns there is a security threat to all U.S. citizens in Afghanistan. No area in Afghanistan is immune to violence, and the potential exists throughout the country for hostile acts, either random or targeted, against U.S. and other Western nationals at any time. Travel in all areas of Afghanistan is unsafe.

### **Policies**

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 used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of 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 not drawn 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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 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 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 person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.



AG ¶¶ 7(a) and 7(d) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” 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.”<sup>22</sup>

Pakistan and Afghanistan are countries with significant human rights issues. Both countries have serious security issues and active terrorist groups within their borders that target Americans and Western nations. These issues raise heightened security concerns.

Applicant has close ties with his many family members in Pakistan. His father, brother, stepbrothers, and brothers-in-law are citizens of Afghanistan and reside in Pakistan. His wife, stepmother, and sister are citizens of Afghanistan and reside in the United States. Applicant maintains contact with his family in Pakistan and provides his father, and occasionally his brother, financial support. His wife, stepmother and sister also maintain contact with their family in Pakistan. His wife provides her family in Pakistan financial support. Applicant has strong ties to his family residing in Pakistan. He also has close ties with his family living in the United States who maintain close ties with their family in Pakistan. I find Applicant’s contact with family members who are citizens of Afghanistan residing in the United States and those residing in Pakistan create a heightened security concern. AG ¶¶ 7(a), 7(b), and 7(d) apply. Applicant does not maintain close ties with his cousin living in Japan and the above disqualifying conditions do not apply to him.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and the following are potentially applicable:

- (a) the nature of the relationship 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 and 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

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<sup>22</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; 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.

Applicant has regular contact with his family members in Pakistan. He visited them, has regular contact with them by phone, and provides them financial support. His wife, sister and stepmother living in the United States also maintain more than casual contact with the family in Pakistan. AG ¶ 8(c) does not apply as his family contact is not casual or infrequent.

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. 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 foreign government, the country is known to conduct intelligence operations against the United States, or there is terrorist activity within the country. Applicant has been a citizen of the United States since 1996. He maintains significant contact with his family living in Pakistan and provides financial support to them. He and his family have traveled to Pakistan in the past to visit their family. Terrorist groups in Pakistan and Afghanistan are known for targeting Americans and Westerners. I have considered his outstanding service to the United States while deployed. Unfortunately, it does not outweigh his sense of loyalty and obligation to his family in Pakistan. Due to Applicant's significant ties to his family in Pakistan I am not convinced that there is no conflict of interest. I cannot conclude that Applicant could be expected to resolve any conflict of interest in favor of the United States. I find AG ¶ 8(b) does not apply.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant's contact with his wife, father, brother, stepbrothers, brothers-in-law, and stepmother is more than casual. Pakistan and Afghanistan are countries that pose dangers to Americans and are known for their poor human rights records. He has significant contact with his family living in Pakistan. Although he has ties to the United States, I cannot find it is unlikely that Applicant will be placed in a position of having to choose between the interests of his family in Pakistan and the interests of the United States. AG ¶ 8(a) does not apply.

### **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(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 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 41 years old. He became a naturalized citizen of the United States in 1996. He has served with forces in Afghanistan and received high praises for his performance while deployed. Applicant maintains regular contact with family members living in Pakistan who are Afghan citizens. He provides them financial support. His wife, stepmother, and sister who are Afghan citizens residing in the United States also maintain more than casual contact with their family in Pakistan. Afghanistan and Pakistan have terrorist groups within their borders who target Americans and westerners and have serious human rights problems. I have considered Applicant's service to the United States, but find it does not outweigh the foreign influence concerns. Applicant's foreign contacts are a security concern. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the foreign influence guideline.

### **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-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant

Subparagraph 1.j:

For Applicant

**Conclusion**

In light of all of the circumstances it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge