



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



In the matter of:)
)
-----) ISCR Case No. 14-02029
)
Applicant for Security Clearance)

Appearances

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

12/03/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On September 20, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On February 27, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline B (Foreign

¹ GE 1 (e-QIP, dated September 20, 2013).

Influence), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on March 11, 2015. In a sworn statement, dated March 13, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On May 26, 2015, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on June 1, 2015. A Notice of Hearing was issued on June 5, 2015, and I convened the hearing, as scheduled, on June 25, 2015.

During the hearing, seven Government exhibits (GE 1 through 7) were admitted into evidence without objection. No Applicant exhibits (AE) were offered at the time. Applicant testified. The transcript (Tr.) was received on July 6, 2015. I kept the record open to enable Applicant to supplement it. He timely submitted a number of documents which I accepted and marked as AE A through AE T, without objection. The record closed on July 16, 2015.

Rulings on Procedure

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Islamic Republic of Pakistan (Pakistan), appearing in five U.S. Government publications. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Pakistan in publications of the White House² and the U.S. Department of State.³

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,⁴ as set forth below under the Pakistan subsection.

² The White House, Office of the Press Secretary, *Press Briefing by Senior Administration Officials on the Killing of Osama bin Laden*, dated May 2, 2011.

³ U.S. Department of State, Bureau of Counterterrorism, *Country Reports on Terrorism 2013*, Chapter 5: *Terrorist Safe Havens (Update to 7120 Report)*, published April 2014; U.S. Department of State, Bureau of Counterterrorism, Chapter 2 extracts: *Country Reports: South and Central Asia Overview*, published April 2014; U.S. Department of State, Bureau of Consular Affairs, *Pakistan Travel Warning*, dated February 24, 2015; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2013: Pakistan*, undated.

⁴ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

Findings of Fact

In his Answers to the SOR, Applicant admitted, without further commentary, all of the factual allegations pertaining to foreign influence (§§ 1.a. through 1.d.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 55-year-old prospective employee of a defense contractor who, since September 2013, has been awaiting a security clearance to serve as a linguist.⁵ For over a decade, Applicant has been a language instructor for a variety of employers, as well as a self-employed taxi driver, and he has experienced several periods of unemployment (June 2003 until May 2006; July 2009 until January 2010; September 2012 until October 2012; March 2013 until at least June 2015) interspersed between periods of employment.⁶ After receiving his Pre-Medical (F.Sc.) degree in 1977, Applicant was awarded a Bachelor of Medicine and Bachelor of Surgery (MBBS) degree in 1984.⁷ Applicant has never served in the U.S. military.⁸ He has never held a security clearance.⁹ Applicant was married the first time, to a native-born U.S. citizen, in 2002, and divorced in 2003. He married his second wife, also a native-born U.S. citizen, in 2003, and they divorced in 2007. Despite being divorced from his second wife, Applicant continues to cohabit with her.¹⁰

Foreign Influence

Applicant's parents were born in Pakistan,¹¹ and, before their deaths, they were both citizens and residents of a city that is a substantial distance from the Federally Administered Tribal Areas (FATA) of Pakistan.¹² Applicant's father was, before his retirement, a sergeant in the British Indian Army, and his mother was a housewife.¹³ He has four brothers, ranging in ages 51 to 70, and five sisters, ranging in ages 50 to 64, all of whom are citizen-residents of Pakistan.¹⁴ One brother is a practicing physician, and

⁵ Tr. at 73; GE 1, *supra* note 1, at 15; GE 2 (Personal Subject Interview, dated October 22, 2013), at 1.

⁶ Tr. at 74; GE 1, *supra* note 1, at 15-24.

⁷ GE 1, *supra* note 1, at 14; AE M (Certificate, dated September 26, 1993).

⁸ GE 1, *supra* note 1, at 25.

⁹ GE 1, *supra* note 1, at 65; Tr. at 5.

¹⁰ GE 1, *supra* note 1, at 28-30; GE 2, *supra* note 5, at 2; Tr. at 71.

¹¹ Under the Indian Independence Act of 1947, India was partitioned into two separate countries, India and Pakistan. As Applicant's parents were both born before partition, they were actually born in India.

¹² GE 5 (Relatives and Associates Chart, dated August 26, 2013), at 3.

¹³ GE 1, *supra* note 1, at 31-32 (Personal Subject Interview, dated October 12, 2010), at 1.

¹⁴ GE 5, *supra* note 12, at 1-2.

the other three are, or were, either self-employed or retired.¹⁵ Two of Applicant's sisters are married, one is a widow, one is single, and one is divorced.¹⁶ With the exception of Applicant's father's military service, his parents and his siblings have never had any connection with the Pakistani Government, the military, or the intelligence service.¹⁷ None of Applicant's siblings reside near any of the disputed territories in FATA section of northwest Pakistan or in localities that are currently in the center of hostilities or terrorist activities.¹⁸

The frequency of Applicant's contacts with his siblings is varied. He used to speak with some siblings on a monthly basis, some on an annual basis, and some once every three years, but that frequency has been essentially reduced over time.¹⁹ Since he first entered the United States in 1994, Applicant traveled to Pakistan on two occasions: 2006 for over 30 days; and 2009 for several months when his father was ill and shortly before he passed away.²⁰ He has no plans of returning to Pakistan.²¹

Applicant was born in Pakistan.²² His primary and secondary education, as well as his undergraduate and graduate education occurred in Pakistan.²³ Upon receiving his medical degree he served three six-month tours as the U.S. equivalent of an intern or resident in three local hospitals in Pakistan.²⁴ He served as a medical officer with the Pakistani government and at a local hospital for over two years,²⁵ and in as a medical officer in another country for over five years.²⁶ Applicant immigrated to the United States in 1994 in order to attend a U.S. university and pursue U.S. medical licensing.²⁷ He received permanent residency in 2006 and became a naturalized U.S. citizen in August 2011.²⁸ Applicant maintained dual citizenship, but in November 2013 he formally

¹⁵ Tr. at 33-38; GE 5, *supra* note 12, at 1.

¹⁶ Tr. at 38-40; GE 5, *supra* note 12, at 1-2.

¹⁷ Tr. at 35, 38; GE 1, *supra* note 1, at 33-45; GE 5, *supra* note 12, at 1-2.

¹⁸ Tr. at 79.

¹⁹ GE 2, *supra* note 5, at 2; GE 5, *supra* note 12, at 1-2; Tr. at 78-79.

²⁰ GE 1, *supra* note 1, at 49-54; GE 2, *supra* note 5, at 4; Tr. at 42.

²¹ Tr. at 80-81.

²² GE 1, *supra* note 1, at 5.

²³ AE Q (Certification, dated September 1, 1996); AE L (Character Certificate, dated November 29, 1984).

²⁴ AE O (Certification, dated January 26, 1986); AE N (Certification, dated January 23, 1986); AE P (Certification, dated January 20, 1986); AE R (Certification, undated); AE T (Certification, undated); AE R (Certification, undated); AE S (Certification, dated November 23, 1995).

²⁵ GE 1, *supra* note 1, at 25-26; GE 2, *supra* note 5, at 2-3; AE K (Certification, dated January 19, 1993)..

²⁶ GE 1, *supra* note 1, at 26; GE 2, *supra* note 5, at 2-3.

²⁷ GE 4 (Security Screening Questionnaire, dated October 3, 2013), at 1, 4.

²⁸ GE 3 (Certificate of Naturalization, dated August 5, 2011); GE 4, *supra* note 27, at 5.

renounced his Pakistani citizenship and returned a number of expired Pakistani passports.²⁹ Although Applicant has no financial interests in Pakistan, since 2009, he periodically sent two of his sisters approximately \$6,000 combined to cover daily living expenses.³⁰ In 2012, he sent a nephew approximately \$50,000 to enable one of his sisters to purchase some land for his sisters' financial security. Applicant has no control over the property.³¹ He no longer feels a sense of obligation regarding his sisters, for now that he has afforded them financial stability, his brothers should now be responsible for them.³²

Pakistan

Pakistan is a parliamentary federal republic in South Asia. It is a low-income country, with a population that is 97 percent Muslim. After September 11, 2001, Pakistan reassessed its relations with the Taliban and pledged support to the United States and the international coalition in Operation Enduring Freedom, which aimed at removing the Taliban from power. Despite this support, members of the Taliban are known to be in the FATA of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. Various terrorist organizations, including extremists from the Haqqani Network, Tehrik-e Taliban Pakistani (TTP), Lashkar I Jhangvi, Lashkar e-Tayyiba, and al-Qaida, operate openly in Pakistan. They are referred to as safe havens which are essentially ungoverned, under-governed, or ill-governed areas of Pakistan. Together with the Afghan 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. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed. Although they did act against TTP, Pakistani authorities did not take significant action against the other groups. Things changed in 2013 when one party won a majority of seats in the parliamentary elections. Structural reforms on counterterrorism were enacted, empowering the national government to address terrorism with enhanced law enforcement and prosecutorial powers.

Various extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks have targeted high profile government, military, and western-related sites. In January 2011, the Governor of Punjab was assassinated in a terrorist attack, and in March 2011, the Pakistani Federal Minister for Minority Affairs was assassinated in another terrorist attack. Over 1,500 civilians and security forces personnel were killed in 2013 due to such attacks. Similar incidents occurred in 2014. The U.S. Department of State continues to warn U.S. citizens to defer all non-essential

²⁹ AE A (Letter, dated November 11, 2013).

³⁰ GE 2, *supra* note 5, at 4; GE 4, *supra* note 27, at 13; Tr. at 62.

³¹ GE 2, *supra* note 5, at 4; Tr. at 60-70.

³² Tr. at 90-91.

travel to Pakistan, as the presence of several foreign and indigenous terrorist groups poses a potential threat to U.S. citizens throughout Pakistan.

Pakistan consistently ranks among the most corrupt countries in the world by numerous international organizations. The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. 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, human trafficking, "honor" crimes, sectarian violence, societal discrimination against national, ethnic, racial minorities, sexual identity, and caste status, as well as enforced disappearances, occur. Arbitrary arrests, governmental and police corruption is widespread. 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 pledged its alliance with the United States in counterterrorism methods. Pakistan committed to the elimination of terrorist camps on the Pakistan-Afghanistan border and subsequently 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. Since 2009, the United States has allocated more than \$8.5 billion for Pakistani civilian and security assistance. The United States continues to build a long-term partnership with Pakistan, based on a belief that a stable, secure, prosperous, and democratic Pakistan is in the long-term U.S. national security interest.

On May 1, 2011, U.S. Special Forces personnel raided a large compound located in a residential neighborhood in Pakistan and shot and killed Osama bin Laden, the leader of al-Qaida.

While most of the official U.S. commentary regarding Pakistan focuses on human rights violations and terrorist activities, there is little, if any, evidence that Pakistan is an active participant in economic espionage, industrial espionage or trade secret theft, or violator of export-control regulations.

Character References and Work Performance

Applicant served as a Pashto language instructor at three large military facilities in the United States. A common theme reflected by senior management and students is that Applicant is an extremely efficient, effective, well-focused, hard-working, dedicated, articulate, helpful, and caring individual.³³ The Mountain Language Training Academy of the 10th Mountain Division awarded him a certificate of appreciation for his expertise and dedicated service.³⁴ Applicant also served as a member of a psychiatric research

³³ AE C (Character Reference, dated August 1, 2012); AE I (Character Reference, dated August 8, 2012); AE J (Character Reference, dated July 10, 2012).

team and consultant on patients in long-term care settings at a major U.S. university school of medicine. Two senior staff members found him to be bright, motivated, organized, goal-directed, pleasant, responsible, hard-working, reliable, dignified, responsive, and a good team member.³⁵ Two senior staff members of another major U.S. university school of medicine where Applicant served as an extern in the inpatient psychiatry unit are equally effusive about him, noting that he is intelligent and highly intuitive, with good judgment, good work ethic, and a caring nature.³⁶

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.”³⁷ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”³⁸

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

³⁴ AE B (Certificate of Achievement, dated August 17, 2012).

³⁵ AE E (Character Reference, dated October 6, 1998); AE F (Character Reference, dated September 30, 1998).

³⁶ AE G (Character Reference, dated November 24, 2004); AE H (Character Reference, dated November 19, 2004).

³⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”³⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁴⁰

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁴¹

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.”⁴² 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 as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

Analysis

Guideline B, Foreign Influence

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

³⁹ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁴⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴¹ *Egan*, 484 U.S. at 531

⁴² See Exec. Or. 10865 § 7.

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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁴³ Applicant's relationships with his siblings who remain Pakistani citizens and residents are current security concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(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" is potentially disqualifying. Similarly, under AG ¶ 7(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" may raise security concerns. I find AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his siblings who are Pakistani citizen-residents, to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where:

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.

Similarly, AG ¶ 8(b) may apply where the evidence shows:

⁴³ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

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.

In addition, AG ¶ 8(c) may apply where “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.”

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances, in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.⁴⁴ In fact, the Appeal Board has cautioned against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”⁴⁵

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

In October 2001, U.S. forces and coalition partners led military operations in Afghanistan, forcing the Taliban out of power. Nevertheless, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within both Afghanistan and Pakistan. It is less likely that the Pakistan government would attempt coercive means to obtain sensitive information. The real concern in this instance is not the Pakistan government, but rather al-Qaida or other terrorist organizations operating within Pakistan.

Applicant's siblings are citizens and residents of Pakistan, residing in locations that are substantial distances from both the FATA of Pakistan and Balochistan Province. There is substantial risk – a “heightened risk” – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. There is no evidence that Applicant's siblings are, or ever have been, political activists, challenging the policies of the Pakistan government; that

⁴⁴ See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

⁴⁵ ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

terrorists have approached or threatened Applicant or his siblings for any reason; that the Pakistan government, al-Qaida, or other terrorist organizations have approached Applicant; or that his siblings currently engage in activities that would bring attention to themselves. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Pakistan government, al-Qaida, or other terrorists, which may seek to quiet those who speak out against them.

Applicant relocated from Pakistan to the United States in 1994 and has resided in the United States since that time; he married twice here; and he worked here. He formally renounced his Pakistani citizenship. With the exception of his siblings residing in Pakistan, Applicant's immediate family member, his ex-wife/current cohabitant resides in the United States. Moreover, he wants his security clearance so that he can return to his linguist/language instructor position to assist U.S. Armed Forces. He has offered to risk his life to support the United States' goals in Pakistan, and has shown his patriotism, loyalty, and fidelity to the United States.

Applicant's continuing relationship with his siblings is relatively close and his contacts with them are sometimes frequent and sometimes infrequent, but generally too close and frequent to generate more than a limited application of AG ¶¶ 8(a) and 8(c). However, I am persuaded that his loyalty to the United States, as well as his loyalty to his medical profession, is steadfast and undivided, and that he has "such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." 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(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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴⁶

⁴⁶ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence against mitigating Applicant's situation, because his siblings are citizens and residents of Pakistan. Although they reside in locations that are a substantial distance from both the FATA of Pakistan and Balochistan Province, there is substantial risk – a “heightened risk” – of foreign exploitation, inducement, manipulation, pressure, or coercion from al-Qaida, or other terrorist organizations, but not necessarily from the Pakistan government. (See AG ¶ 2(a)(8).)

The mitigating evidence under the whole-person concept is more substantial. Applicant has offered to risk his life to support the United States' goals, and has shown his patriotism, loyalty, and fidelity to the United States. He is fully aware of the risks to himself and family members from al-Qaida and other terrorists. These circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him.⁴⁷ With Applicant's substantial withdrawal from his continuing relationships with his siblings residing in Pakistan, especially since he has furnished a financial security for two of his sisters, there is a reduced “heightened risk” of foreign exploitation, inducement, manipulation, pressure, or coercion.

While the current environment regarding terrorism in Pakistan is difficult, it differs only in degree from other democracies throughout the world. Terrorists are relatively active in France, Belgium, the United Kingdom, and even in the United States. Some countries have started to confront the problem, while others are either unwilling or unable to do so. Pakistan is one of those countries that has finally awakened to the threat after years of being unable to effectively do so. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

⁴⁷ See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge