



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



In the matter of:)
)
-----) ISCR Case No. 07-04751
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Michael L. Coyne, Esq.; Joseph Devlin, Esq.

July 24, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 26, 2006, in renewal of his secret clearance. On January 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B that provided the basis for its action to deny him a security clearance and refer the matter to an administrative judge. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on February 8, 2008, and requested a hearing before an administrative judge. The case was assigned to me, and on April 18, 2008, I scheduled a hearing for May 9, 2008. On May 7, 2008, Applicant, acting *pro se*,

requested a brief continuance that was granted without any objection from the government. On May 21, 2008, I rescheduled the hearing for June 27, 2008.

The parties appeared as scheduled on June 27, 2008. Two government exhibits (Ex. 1-2) and 16 Applicant exhibits (Ex. A-P) were admitted and Applicant and two coworkers testified on his behalf. A transcript (Tr.) of the hearing was received by DOHA on July 8, 2008. Based on review of the case file, pleadings, exhibits, and testimony, and the facts for administrative notice, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

On April 16, 2008, Department Counsel requested administrative notice be taken of certain facts relating to Pakistan and to India. The request was based on publications from the U.S. State Department, the Congressional Research Service, the Director of National Intelligence, the U.S. Department of Justice, and the U.S. Department of Commerce. The government's formal request and the attached documents were not admitted into evidence but were included in the record.

On April 24, 2008, I notified the parties of my intention to take administrative notice of specific facts, subject to revision based on the evidence admitted at the hearing and any valid objections. The parties were informed that any objections would be taken up at the hearing. Before the introduction of any evidence on June 27, 2008, I confirmed the parties had no objections, although counsel for Applicant expressed concerns about the relevance of some of the facts. I agreed to take administrative notice of facts pertaining to Pakistan and to India. At Applicant's request, I also agreed to take notice of provisions of the National Industrial Security Program Operating Manual (DoD 5220.22-M) dated February 28, 2006, in assessing Applicant's record of security compliance.

On July 11, 2008, I informed the parties that consistent with DOHA Appeal Board rulings stressing consideration of the most current political conditions in foreign countries when evaluating Guideline B concerns (see ISCR Case No. 05-11292, Apr. 12, 2007), I intended to review for purposes of taking administrative notice recent testimony before the U.S. Senate Foreign Relations Committee by high-ranking U.S. State Department officials concerning U.S.-Pakistan relations.¹ The parties filed no objections by the July 21, 2008, deadline for comment.

¹See U.S. Department of State's publications: *Pakistan's Fata Challenge: Securing One of the World's Most Dangerous Areas*, reporting the May 20, 2008, testimony of John Negroponte, Deputy Secretary of State, and *A New Strategy for Enhanced Partnership with Pakistan*, reporting the June 25, 2008, testimony of Richard A. Boucher, Assistant Secretary for South and Central Asian Affairs.

Motion to Amend SOR

Applicant was granted a continuance of his hearing for time to prepare his case given his very then recent return from India for his sister's funeral. Before presenting any evidence on June 27, 2008, the government withdrew SOR ¶ 1.b alleging the Pakistani citizenship and Indian residency of Applicant's sister in light of her death.

Findings of Fact

In the amended SOR, DOHA alleges under Guideline B, foreign influence, that Applicant has two brothers and one sister who are resident citizens of Pakistan (SOR ¶ 1.a), and one brother and two sisters who are resident citizens of India (SOR ¶ 1.c). DOHA further alleges that Applicant traveled to India nine times between June 2000 and July 2007, and to Pakistan five times between June 2000 and September 2005 (SOR ¶ 1.d). Applicant admits the allegations, explaining that his travel to India and Pakistan was to visit family and/or to attend a wedding. After considering the evidence of record, I make the following findings of fact.

Applicant is a 50-year-old senior electrical engineer who has worked on the same radar system for a U.S. defense contracting firm since he started his employment in March 1985 (Ex. 1, Tr. 93). He held a confidential security clearance from 1985 until 1995 when it was upgraded to secret (Tr. 117-18). He has complied with his security responsibilities (Ex. C, Ex. D, Tr. 61, 98). For about a year from July 2006, Applicant had collateral duties as the Information Systems Security Officer for his area (Ex. C, Tr. 99-101). He was selected for the position by his supervisor and company security personnel (Ex. 100). He received additional security training (Ex. P, Tr. 127) for his duties, which included monitoring access and weekly network audits (Tr. 61, 100).

Applicant is the youngest of nine children (five sons and four daughters) born in Pakistan to resident citizens of that country (Ex. 1).² Brother #1, who is now 71, immigrated to the United States and became naturalized in November 1977 (Ex. 1, Tr. 89). Two sisters (sisters #2 and #3) had married and immigrated to India before Applicant's birth (Tr. 107, 145-46).

Applicant found it difficult growing up as a Hindu in an overwhelmingly Muslim country (Tr. 86). Under the sponsorship of brother #1, Applicant immigrated to the U.S. from Pakistan in March 1979. He began part-time college studies the following month. From September 1979 to June 1983, he pursued full-time undergraduate study, and earned his degree in electrical engineering (Tr. 86).

²For ease of reference, his siblings are identified by number and gender starting with the eldest brother as brother #1 and the eldest sister as sister #1.

In August 1982, Applicant married his spouse in Pakistan (Tr. 86, 132-33).³ A native of Pakistan, she immigrated to the U.S. in March 1983 (Tr. 132). In October 1984, they had the first of their two sons. The younger was born in January 1988 (Ex. 1, Ex. B). Both sons were born in the U.S. and remain U.S. citizens (Ex. 1).

As soon as he was eligible, Applicant applied for U.S. citizenship, and he became naturalized in January 1985 (Ex. 1, Tr. 86). Applicant renounced his Pakistani citizenship on acquiring his U.S. citizenship (Tr. 87), and he obtained his U.S. passport. His most recent U.S. passport was issued to him in late August 2004 (Ex. 1). Applicant's spouse is a dual citizen of Pakistan and the U.S. She became a naturalized U.S. citizen in August 1996 (Ex. 1).

After he earned his degree, Applicant worked in the computer industry for about a year (Tr. 128) until March 1985 when he started with his present employer. In July 1987, Applicant and his spouse moved to the community where they still maintain their residence (Ex. 1, Tr. 84). In March 1988, Applicant and his nephew (brother #1's son) opened a jewelry store business in the town. In the articles of organization (incorporation) Applicant is listed as director and treasurer, his nephew as director and president, and Applicant's spouse as secretary (Ex. E). Applicant's spouse continues to work full-time at that location (Ex. E, Tr. 120-21). In April 1999, they expanded the business by opening a second store in another locale where his nephew and his nephew's spouse conduct the operations (Ex. H, Tr. 121). Applicant and his nephew contribute through their business to local community service organizations (Ex. F). Applicant is an active member of an ethnic cultural/religious organization in his area (Ex. J).

Applicant and his spouse bought their present home in July 1998 (Ex. 1, Tr. 84). Their two sons excelled academically in the local public schools, and both were active in school activities. After high school, they went on to the same polytechnic university in the U.S. Since earning his bachelor's degree in 2006, the elder son has worked as an engineer for Applicant's employer at a different facility (Ex. A, Tr. 89-90). The younger son just completed his junior year in college with a cumulative grade point average of 3.47. He is pursuing a double major; in computer and systems engineering, and in electrical engineering (Ex. B, Tr. 90-91).

Two of Applicant's brothers are lifelong resident citizens of southern Pakistan.⁴ Brother #2 served within the Pakistani government as an appointed representative of minority affairs from November 1988 to October 1999. For about two years from September 2006, he was an advisor at the state level on minority issues. He was

³Although Applicant and his spouse knew one another beforehand, Applicant's mother arranged the marriage (Tr. 131-32).

⁴The U.S. State Department strongly discourages travel to the city where brother #4 resides, due to recurring violence characterized by random bombings, shootings, and kidnapping for ransom. Americans and other Westerners continue to be targets of hostility, including anti-Western mob violence, in the area. See *Country Specific Information–Pakistan*, dated September 27, 2007.

reappointed in 2008 to again serve as minority affairs representative at the national level (Ex. 2, Tr. 156). Brother #4 is a physician in general practice in Pakistan. He has three children, including a son who resides in the U.S. His daughter is married and living in the United Arab Emirates (UAE). His youngest child is still a minor. (Tr. 141-42).

Brother #3 moved from Pakistan to India in about 1981, and he acquired Indian citizenship. To Applicant's understanding, brother #3 owns rental property in India. Brother #3 has two sons who live in the U.S. and India, respectively (Tr. 144).

Sister #1 lived in Pakistan until about 2003 when she moved to India to be near her adopted son. She remained solely a Pakistani citizen, and traveled back to Pakistan on occasion when her health permitted it (Tr. 110, 133). Some 25 years older than Applicant (Ex. 1, Ex. K), she was "like a mother to him" and he telephoned her every Saturday (Tr. 105). She died in April 2008 (Ex. K).

Sisters #2 and #3 are longtime resident citizens of India, sister #2 since before 1947 (Tr. 107) and sister #3 since 1951 (Tr. 146). Neither sister worked outside of the home. Sister #2's spouse owned a business before he retired (Tr. 145-46). Sister #3 has one son who is involved in stock trading in India (Tr. 147). Sister #4 in order of birth died before Applicant completed his September 2006 e-QIP (Ex. 1). Sister #5 has been a lifelong resident citizen of Pakistan. She is married to a landlord and has grown children (Tr. 142-43).

Applicant had weekly telephone contact with sister #1 before her death. As of July 2007, the frequency of telephone contact with brothers #2 and #3 was every three weeks, with brother #4 every two weeks, with sisters #2 and #3 about once a month, and with sister #5 from once every three months to once monthly (Ex. 2, Tr. 137, 143, 147).

Applicant traveled back to Pakistan and to India to see his family after he immigrated to the U.S. Before his mother died in 1990, he went to Pakistan every two or three years (Tr. 111). Since 1990, his trips have been no longer than two or three weeks in duration, and primarily to see sister #1 with whom he had a particularly close relationship. About 80 percent of his trips were to see sister #1, whether she was in Pakistan or India (Tr. 103-05), although he also visited with his other siblings. He stayed with brother #4 when in Pakistan and with brother #3 when in India (Tr. 153-54). He traveled to India and Pakistan from June to July 2000, and again in July 2001. While on business trips for his employer to Kuwait in December 2001 and January 2002, he spent a few days in India. He took advantage of another business trip to Kuwait in January 2003, and spent seven days visiting those family members in Pakistan. Over the January/February 2004 time frame, he spent 20 days in India, but also stopped in Pakistan to see his other siblings. In November 2004, Applicant traveled with his spouse and children to India for the wedding of a nephew (a son of brother #3, Tr. 162). Applicant spent 13 days in Pakistan in September/October 2005, eight days in India in March 2006, and ten days in India in July 2006. He and his immediate family vacationed to India in July 2007 (Tr. 163). (Ex. 1, Answer). Applicant traveled to India at least twice

in 2008 when sister #1 was hospitalized, and he was there on her death in April 2008 (Tr. 147-48, Ex. K). His siblings in Pakistan came to India for the funeral (Tr. 144) so Applicant saw them as well. Applicant has not contacted his siblings in India or Pakistan since his sister's funeral, although sister #1's son and brother #4 called him to ask how he was doing (Tr. 148, 161).

With the death of his beloved sister, Applicant no longer has the same desire to travel to India or Pakistan. He recently went to the security office at work and offered to turn in his U.S. passport so that it would be available to him only for business travel. The security office refused to accept it (Tr. 149).

Brothers #2 and #4 come to the U.S. once every two to four years to visit their sons. Applicant sees them at least once for dinner when they are in the U.S. (Tr. 140, 161). His brothers are aware that he works for a U.S. defense contractor (Tr. 156).

Applicant's spouse's three siblings are citizens of Pakistan. Her brother lives in the United Arab Emirates where he is employed in the food service business (Tr. 152-53). Applicant took advantage of flight stopovers during his trips to the region in June 2000, July 2001, January 2002, January 2004, September 2005, and July 2007 and visited with his brother-in-law in the UAE (Ex. 1, Ex. 2). Applicant otherwise has telephone contact with him about once every six months (Ex. 2), although his spouse calls her brother every three or four weeks (Tr. 152). Applicant's spouse's sisters reside in Pakistan. Applicant believes they do not work outside of the home (Tr. 150). He last saw them in person when in Pakistan in September 2005, and his telephone contact with them is no more frequent than once very six months (Ex. 2). His spouse calls her sisters once a month (Tr. 151).

Applicant has no financial interests in either India or Pakistan (Tr. 112). He does not send any financial support to his or his spouse's relatives abroad (Tr. 155).

As the lead engineer in a testing area that utilizes classified software, Applicant has consistently met his work commitments, including compliance with security procedures. He has been called on by his employer to travel overseas to train and support foreign customers and to troubleshoot problems with the radar system that he has focused on throughout his career with the defense contractor. He exceeded his department's training requirements for 2007 (Ex. C). Applicant's professionalism and conscientious work in support of production integration and testing of the radar system have brought the respect of his coworkers and the test community. He is considered to be an integral member of the radar test team and a valuable asset to his employer (Ex. D).

After review of U.S. government publications concerning Pakistan and India and their respective relations with the U.S., I take administrative notice of the following facts:

Pakistan

Pakistan is a parliamentary democracy that has maintained diplomatic relations with the U.S. since 1947. U.S. military aid to Pakistan has been suspended at times due to concerns about Pakistan's program to develop nuclear weapons. Pakistan has been implicated in the sale of nuclear technology to third countries, including to North Korea. Pervez Musharraf, then Army Chief General, became Pakistan's chief of state following a military coup in October 1999. The overthrow of a democratically elected government triggered an additional layer of sanctions by the U.S., including restrictions on foreign military financing and economic assistance to Pakistan other than refugee and counter-narcotics assistance. The U.S.-Pakistan relationship changed significantly after September 11, 2001. Under President Musharraf, Pakistan pledged to support the U.S. campaign to eliminate the Taliban in Afghanistan, and to provide extensive support on the war on terrorism. Pakistan has captured more than 600 al-Qaida members and its supporters, and afforded the U.S. unprecedented levels of cooperation by allowing the U.S. military to use bases within Pakistan, helping to identify and detain extremists, tightening its border with Afghanistan, and blocking terrorist financing. The U.S. resumed military aid, increased economic assistance, and provided debt relief to Pakistan, making Pakistan among the world's leading recipients of U.S. aid since 2001. In 2004, the U.S. recognized closer bilateral ties with Pakistan by designating Pakistan as a major non-NATO ally. Serious political crises in Pakistan in 2007, culminating in the assassination of former prime minister and opposition leader Benazir Bhutto in December 2007, severely undermined the status of the military-dominated Musharraf government, and it led to President Musharraf retiring from the army and taking the presidential oath of office as a civilian. Since parliamentary elections in February 2008, Pakistan has been under the rule of a more moderate civilian government. The U.S. remains committed to pursuing a long-term comprehensive partnership with Pakistan.

Although considered a "frontline partner" in the war on terror, Pakistan remains a major source of Islamic extremism. Pakistan's western tribal areas provide sanctuary for Taliban and al-Qaida extremists and insurgent activity. A number of extremist groups within Pakistan continue to target American and other Western interests, high-level Pakistani government officials, as well as members of minority indigenous and religious groups. Anti-American sentiment is high among some Islamists in Pakistan. The Department of State continues to warn U.S. citizens against nonessential travel to Pakistan in light of the threat of terrorist activity, including to the province where Applicant's brothers #2 and #4 and sister #5 reside.

The human rights situation in Pakistan worsened in 2007, stemming in part from President Musharraf's decision to impose a state of emergency suspending basic civil liberties, including freedom of speech and assembly. While the state of emergency was lifted in December 2007, about a dozen of the more than 6,000 activists detained during the 42-day state of emergency were still under house arrest. Regulatory restrictions continued on the press and freedom of assembly. Other reported human rights problems included restrictions on the citizens' right to change their government, extrajudicial killings, torture, disappearances, poor prison conditions, arbitrary arrest,

lack of judicial independence, widespread corruption and trafficking in persons, and failure to discipline and prosecute those persons responsible for abuses.

India

India is a stable multiparty federal democratic republic with a bicameral parliament. The central government has broad administrative powers in relation to its states. Indian society and political organization are determined largely by the Hindu caste system of occupational and social hierarchies, by religion, and language, although the influence of these factors has been diluted if not subsumed in the economically prosperous and heterogeneous cities. The Indian government generally respected the rights of its citizens in 2007, although serious problems persisted, in part because of a lack of accountability in the government and security forces and lax enforcement of the human rights laws. Human rights abuses included the extrajudicial killing of persons in custody, disappearances, torture, rape by police and security forces, poor prison conditions, prolonged detention, excessive force in combating terrorism and regional insurgencies, endemic corruption in the government and police forces, restrictions on travel of visiting experts and scholars, caste-based discrimination, and domestic violence and other abuses against women and children. Human rights abuses and terrorist acts have been committed in recent years, including in 2007, by separatist guerillas, Maoist insurgents from Nepal, and other terrorists within India.

Long an active member of the United Nations, India remains a leader in the developing world. It has a long tradition of participating in U.N. peacekeeping operations. The U.S. recognizes India as key to strategic interests and has sought to strengthen its relationship with India, especially since 2004. Both countries are committed to political freedom protected by representative government, and share common interests in the free flow of commerce, in fighting terrorism, and in creating a strategically stable Asia. Differences over India's nuclear weapons programs and pace of economic reform exist but the U.S. is committed to continuing a strong, dynamic partnership with India. In June 2005, the U.S. and India signed a ten-year defense pact outlining planned collaboration in multilateral operations, expanded two way defense trade and increasing technology transfer opportunities. In July 2007, the U.S. and India reached a historic milestone in their strategic partnership by completing negotiations on a bilateral agreement for peaceful nuclear cooperation.

India and Pakistan have been tense rivals, largely over Kashmir, since the partition of the subcontinent on independence in 1947. Both India and Pakistan have large defense establishments, including nuclear weapons capability and ballistic missile programs, at the cost of economic and social development. The U.S. strongly encourages an ongoing India-Pakistan peace initiative and remains concerned about the potential for conflict over Kashmiri sovereignty and "cross-border terrorism." India has traditionally positive relations with Iran and India is ranked tenth among international investors in Iran. India is fully committed to the construction of a gas pipeline to deliver Iranian natural gas to India through Pakistan despite U.S. strong opposition.

India is undergoing rapid economic expansion, although bureaucracy and lack of infrastructure present obstacles to growth. The U.S. is India's largest trading partner and its largest investment partner. The U.S. strongly supports the market reforms undertaken by India since 1991 and urges further liberalization of trade and investment barriers. Indian enterprises have aggressively pursued acquisition of U.S. restricted, dual use technology in violation of U.S. export controls.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 common sense 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 avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified 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

The security concern for foreign influence is set out in AG ¶ 6:

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.

Applicant admits he had a very close relationship with his eldest sister ("number one" in terms of his affections, Tr. 106). He called her every Saturday, and visited with her during most of his trips to Pakistan and/or India, often arranging his travel to coincide with her whereabouts. He has never shared that same closeness with his other siblings, but it is clear that he has ongoing relationships with them. He stayed with brother #3 and visited with sisters #2 and #3 when in India. When in Pakistan, he stayed with brother #4 and visited with brother #2 and sister #5. As of July 2007, he had regular telephone contact with his siblings with the exception of sister #5, whom he called once a month to once every three months. Although he has not telephoned his siblings since sister #1's funeral in May 2008, brother #4 called him from Pakistan to check on his well-being. 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") applies because of his bonds with his siblings, who are resident citizens of India, a country known to target U.S. economic intelligence, and Pakistan, a country associated with a risk of terrorism and anti-Western violence.

Moreover, 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") is also implicated because of brother #2's position within the Pakistani government as an appointed representative of

minority affairs. Even if Applicant's brother is only one of several such representatives,⁵ his affiliation with the national government from November 1988 to October 1999 and more recently since his reappointment in 2008, heightens the risk because of his ongoing contacts with other governmental officials. Brother #2 also served as an advisor to the provincial government from September 2006 to 2008, so it may be inferred that he holds some position of prominence within his local community in Pakistan as well.

Applicant's spouse contacts her sisters, who are resident citizens of Pakistan, about once a month. She and Applicant visit them when in Pakistan. She also contacts her brother who lives in the U.A.E., and Applicant has made the effort to see his brother-in-law several times when en route to or from India or Pakistan. A risk of undue foreign influence may be heightened through a spouse's foreign ties (see AG ¶ 7(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")). However, the government did not allege any concerns because of his spouse's relationships with her siblings. Nothing about their occupations likely heightens the risk. Her sisters do not work outside the home, and her brother is employed in the food business as a wholesaler.

The government alleged separate foreign influence concerns because of Applicant's frequent travel to Pakistan and India. Applicant made about 14 separate trips to the region to see his relatives between June 2000 and April 2008. On a couple of occasions, he took advantage of scheduled business travel to Kuwait and spent a few days with some of his siblings. AG ¶ 7(i) applies where there is "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country." There is no evidence of conduct that would implicate AG ¶ 7(i). The primary relevance of his foreign travel is that it confirms the close relationship with his siblings, which is more appropriately covered under AG ¶ 7(a).

Mitigating condition AG ¶ 8(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.") is difficult to satisfy. Pakistan is allied with the U.S. in fighting terrorism and insurgent activity in the region, and it is not known to actively target U.S. sensitive information. However, it has not been fully successful in stemming the exploitation of its rugged tribal areas by terrorists and violent extremists for recruitment and safehaven. American and Western interests have been targeted in the region where Applicant's siblings live. In light of brother #2's governmental position, there exists the potential for Applicant's family members in Pakistan being taken hostage or otherwise pressured or influenced. Pakistan has a poor human rights record, including of arbitrary arrest and discrimination against religious

⁵Applicant testified to not knowing much about his brother's position or duties (Tr. 159) but also that he believes there are 10 or 11 minority members (Tr. 164).

minorities. It remains to be seen whether the human rights situation will improve significantly in Pakistan under the new democratically elected government. The death of the sibling Applicant held in closest affection reduces, but does not completely eliminate, the risk of undue foreign influence.

In contrast, although some serious problems persist, the Indian government generally respects the human rights of its citizens. While a number of anti-Western terrorist groups are believed to be active in India, the risk faced by his relatives is that they may become indiscriminate victims of a violent terrorist act like a bombing on public transport. India has a history of targeting U.S. sensitive information, and Indian companies continue to pursue acquisition of dual use technology in violation of export restrictions. However, there is nothing about the endeavors of brother #3 or sisters #2 and #3 that have any military, intelligence, security, or even economic implications, and they are not likely to be targeted. Sisters #2 and #3 are 73 and 65 years old, have lived in India for more than 50 years, and never worked outside of the home. Brother #3 knows Applicant works for a defense contractor, but he is by occupation a landlord in one of India's largest cities. He is not in a situation where he is likely to be pressured by the Indian government or other entity seeking U.S. classified information.

Applicant's vulnerability to undue foreign influence because of his relationships with his siblings, especially those in Pakistan, may nonetheless be mitigated by deep and longstanding relationships and loyalties in the U.S. (see AG ¶ 8(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")). Applicant's actions show a primary loyalty to the U.S., where he has established roots since joining his oldest brother here in 1979. Although he went home to Pakistan to enter into a marriage arranged by his mother, he brought his spouse to the U.S. As soon as he was eligible, he applied for his U.S. citizenship. He and his spouse became naturalized U.S. citizens in 1985 and 1996, respectively. On his U.S. naturalization in 1985, Applicant relinquished his Pakistani citizenship. His travels to India and Pakistan to see his siblings have been as a U.S. citizen on a U.S. passport. He has lived in the same community in the U.S. for more than 20 years. His two sons were born in the U.S. and remain U.S. citizens. They attended the local public schools before they went on to a private technological university in the U.S. All of his financial assets are in the U.S. In addition to owning his home, Applicant has been part-owner since 1988 of a jewelry business that serves as his spouse's primary employer. With the very recent death of sister #1, Applicant testified credibly that he no longer has the desire to travel to Pakistan or India to see his siblings. He tried without success to have his employer hold his U.S. passport to prove that he would travel only on business.

His contributions to his employer and his proven track record of complying with security regulations are as significant as are his U.S. ties in assessing whether he can be counted on to resolve any conflict in favor of the U.S.' interests. Applicant has been with the same defense contractor for the past 23 years. The government trusted

Applicant with classified information during the time that his brother #2 represented minority interests with the Pakistani government from 1988 to 1999, and Applicant did not violate his fiduciary duty. Moreover, his employer trusted him with the additional responsibilities of the ISSO when brother #2 was an adviser at the state/regional level. A coworker familiar with Applicant's work since 1988, and with the manner in which Applicant fulfilled his duties as ISSO, described Applicant's protection of secure information as "[p]robably at the utmost, the highest level." (Tr. 61). Coworkers attest to Applicant being a professional, ethical employee well-regarded by his colleagues and by the test community (Ex. D). Applicant has shown for the past 23 years that he can be counted on to comply with his security obligations when the risk of undue foreign influence was greater than it is now that his beloved sister has died and Pakistan and India have strengthened their ties to the U.S. 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.

The salient issue in the security clearance determination is not in terms of loyalty or allegiance, but rather what is clearly consistent with the national interest. See Executive Order 10865, Section 7. An applicant may have the best of intentions and yet be in an untenable position of potentially having to choose between a dear family member and the interests of the U.S. Applicant maintains relationships with his siblings who reside in Pakistan and India. Pakistan has a poor human rights record, and American interests have been targeted by violent extremists and insurgents in the region where his siblings reside. India has a record of targeting U.S. sensitive and protected technology information. At the same time, the U.S. considers both countries as key to its strategic interests, and both Pakistan and India enjoy good relations with the U.S. Pakistan has been a key ally in the war against terrorism.

Applicant has mitigated the security concerns over undue foreign influence. As noted under Guideline B, *supra*, he has spent the last 29 years establishing roots in the U.S. He has no affinity for his native Pakistan, given the discrimination he felt during his youth as a member of a minority religion. His ties to India and Pakistan are solely to his siblings, and he testified credibly to his contact with them becoming less frequent after the death of sister #1, who made the effort to maintain the family ties. By all accounts, Applicant is an ethical person, who has a strong sense of obligation to his immediate family in the U.S. and to his employer. He has been trusted with classified information since 1985 and has not violated that trust. Based on the record before me, It is clearly consistent with the national interest to continue his security clearance.

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:	Withdrawn
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of 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.

ELIZABETH M. MATCHINSKI
Administrative Judge