



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



In the matter of:

SSN:

Applicant for Security Clearance

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)  
) ISCR Case No. 07-06662  
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)

**Appearances**

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

April 22, 2008

**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on November 11, 2006. On October 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, for Applicant. 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.

On December 6, 2007, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 10, 2008. The case was assigned to another administrative judge on January 15, 2008. The case was transferred to me on January 24, 2008. On February 14, 2008, a Notice of Hearing was issued scheduling the hearing for March 12, 2008. The hearing was held as scheduled. The Government offered Government Exhibits (Gov) 1 and 2, which were admitted without objection. The Government requested that administrative

notice be taken of one document with six attachments. The document was marked as Administrative Notice Document 1 (Admin Not 1) without objection. Applicant testified and submitted a nine-page document, which was admitted as Applicant Exhibit (AE) A without objection. The record was held open until March 26, 2008, to allow the Applicant to submit further documents. Applicant timely submitted a ten-page document that was admitted as AE B without objection. DOHA received the transcript of hearing on March 20, 2008. The record closed on March 26, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Administrative Notice**

Pakistan is a parliamentary federal republic in South Asia. The United States and Pakistan established diplomatic relations in 1947. After September 11, 2001, Pakistan pledged and has supported the US led anti-terror coalition. (Admin Not 1; I. U.S. Department of State, *Background Note: Pakistan*, May 2007, at 1-10.) Pakistan is an active partner with the U.S. in the war on terror and has captured several Al-Qaida leaders. However, it is widely believed that Al-Qaida and Taliban fugitives are still using Pakistan as a refuge, especially in the mountainous tribal regions in the north that border Afghanistan. Pakistan is also a major source of Islamic extremism. (Admin Not 1; II, US Department of State, Bureau of Consular Affairs, Country Specific Information – Pakistan, dated January 10, 2008 at 2; V, *CRS Report for Congress, Pakistani - U.S. Relations*, updated October 26, 2006; VII, *Annual Threat Assessment of the Director of National Intelligence*, dated January 11, 2007, at 5, 11.)

The State Department continues to warn U.S. citizens against non-essential travel to Pakistan in light of the threat of terrorist activity. Fatal bomb attacks have occurred in Karachi, Islamabad, Peshawar, Quetta, and Lahore in 2006 and 2007. Some of the attacks have occurred outside major hotels, market areas, and other locations frequented by Americans. Other recent targets have included Pakistani Government officials and buildings, and international non-governmental organizations (NGOs). (Admin Not 1; II, US Department of State, Bureau of Consular Affairs, Country Specific Information – Pakistan, dated January 10, 2008 at 2; IV, U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Pakistan, dated January 10, 2008, at 1.)

The Pakistani government has a poor human rights record. Human rights problems include extrajudicial killings, torture and rape by security forces, lack of judicial independence, arbitrary arrest, wide-spread corruption, disappearance and imprisonment of political opponents and trafficking in women and children. (Admin Not 1, III, U.S. Department of State, Pakistan, Country Reports of Human Rights Practices – 2006, released March 6, 2007 at 1; V, *CRS Report for Congress, Pakistani - U.S. Relations*, updated October 26, 2006)

Additional concerns are raised due to Pakistan's transfer of nuclear technology to North Korea, Iran, and Libya. Pakistan has also sought assistance from North Korea

and China for its own weapons programs. (Admin Not 1, VI, CRS Report for Congress, Weapons of Mass Destruction: Trade Between North Korea and Pakistan, updated November 28, 2006, at Summary, 2-14.)

### **Findings of Fact**

In his Answer to the SOR, dated December 6, 2007, Applicant admitted to all the SOR allegations.

Applicant is a 55-year-old senior engineer employed with a Department of Defense contractor. He has been employed with his current employer since August 2000. His employer's name has changed several times due to mergers and buyouts. He has a Master's Degree in Engineering and a Masters in Business Administration (MBA). He is married and has five children, ages 20, 18, 7-year-old twins, and 1 1/2. (Tr at 5, 41, 64-65; Gov 1.)

Applicant was born in Pakistan. After he obtained his undergraduate degree in engineering, he immigrated to the United States in September 1973 to pursue his graduate studies. In 1976, he was awarded a Masters Degree in Engineering. After he graduated, he worked for various U.S. companies. He attended graduate school while working full-time and received an MBA in 1990. He became a United States citizen on January 12, 1990. He married his wife in 1985. She was a citizen of Pakistan. She became a United States citizen in January 1993. (Tr at 40-43, 64-65; Gov 1.)

In February 1993, Applicant accepted a position in Pakistan with a military truck manufacturing company with a mixture of public and private ownership. The company manufactured and supplied truck axle components. Applicant accepted the position, even though it was a cut in pay, because he thought it was good for his career development. He also thought accepting the position was a good opportunity for his two young children, ages three and five at the time, to get to know their grandparents and other relatives. One of his supervisors was a retired general of the Pakistani Armed Forces. He did not know him before being hired at the company. (Tr at 27-29; 46-47; Answer to SOR.) In 1998, the company started to have financial problems and is no longer in business. Applicant left the company in February 1999 when he moved back to the U.S. (Gov 1, section 18; Answer to SOR.)

When Applicant moved to Pakistan, he traveled on his United States passport and obtained a work visa for a U.S. citizen. He paid U.S. income taxes during the years he worked in Pakistan. He did not vote in Pakistani elections. (Tr at 29, 66-67; Answer to SOR.)

Upon moving back to United States, Applicant was approached by an acquaintance of his brother-in-law who owned a software company in Pakistan to inquire about whether he was interested in developing a U.S. business which would be set up to outsource computer software work to Pakistan. In February 1999, he entered into a business relationship with this man, a U.S. citizen, originally from Pakistan, and

another individual investor, a Canadian citizen, originally from Pakistan. The business never really took off, primarily due to a lack of investment funds, and the agreement was dissolved around December 1999. (Tr at 32-37; Gov 1; Gov 2; AE A; Answer to SOR.)

Applicant's mother passed away in March 1999. In April 1999, he traveled to Pakistan to attend a religious ceremony in his mother's honor and to attend a board meeting for the start-up business. He stayed in Pakistan for about a month. This was his last trip to Pakistan. (Tr at 22-24; Gov 1, Section 18; Gov 2.)

Applicant joined his current company in 2000. He is a senior engineer. He works on building military trucks with safer cabs to prevent injuries. (Tr at 41-42; Gov 1; AE A.)

Applicant's parents are deceased. He has eight brothers and sisters. Two sisters and one brother are citizens of and reside in the United States. (Tr at 38; Gov 1.) Three sisters and two brothers are citizens of and reside in Pakistan. More specifically:

One brother, age 60, is a commercial airline pilot and is a retired officer (pilot) of the Pakistani Air Force. He retired in 1996. He has e-mail contact with his brother every two weeks. The last time he saw his brother was in 2002 at his niece's wedding in the United States. (Tr at 53-54; Gov 1; Gov 2.)

One brother, age 65, is a professor of engineering at a Pakistani university. He last saw him in 1999 and has e-mail contact with him about every two months. (Tr at 54; Gov 1; Gov 2.)

One sister, age 70, is a retired teacher who taught political science at a women's university in Pakistan. Applicant has occasional telephone contact with his sister every couple months. (Tr at 56, 58; Gov 1; Gov 2.)

One sister, age 74, is a practicing obstetrician/gynecologist in Pakistan. Applicant has occasional telephone contact with his sister every couple months. (Tr at 57-58; Gov 1; Gov 2.)

One sister, age 75, is a retired nurse who still practices homeopathic medicine for the poor. Applicant has occasional telephone contact with his sister every couple months. (Tr at 57-58; Gov 1; Gov 2.)

Applicant's father-in-law is deceased. His mother-in-law is a citizen of Pakistan and a permanent resident of the United States. She has stayed with Applicant and his wife for the past four months. She has nine children. Five of her children reside in the U.S., two reside in Canada, and two reside in Pakistan. She travels around to her various children's homes to visit. She has two daughters who live in Pakistan. One daughter is a teacher of microeconomics at a Pakistani university. Her husband is a senior officer at a bank. Her other daughter is a housewife. She is married to a shipyard worker. His mother-in-law is planning a trip to Pakistan in late March or early April 2008. (Tr at 58 – 61.)

Applicant's wife and five children are U.S. citizens and live with him in the U.S. He owns his home and his investments are in the United States. He has no overseas investments. He does not own property in Pakistan. (Tr at 66.)

The Vice President of Engineering of Applicant's company states that Applicant and the team he leads have been valuable contributors to the military truck development plans in the organization. He has been a key member of the team developing the Mine Resistant Armor Protected (MRAP) vehicles being deployed by the US Army to improve the safety of US troops. Applicant demonstrates integrity and good judgment and has been a valuable leader for his group. (AE B at 2.) Applicant received an overall performance rating of "Very Good" on his last two performance appraisals dated February 5, 2007 to January 31, 2008, and January 31, 2006, to February 5, 2007. (AE B at 3-10.)

### **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 over-arching 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.

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 relating to the guideline 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.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant’s case.

Foreign Influence Disqualifying Condition (FI DC) ¶ 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*) applies because the Applicant’s two brothers and three sisters are citizens of and reside in Pakistan and he has occasional contact with his siblings. It potentially applies to his wife’s relatives who are citizens of and reside in Pakistan as well. His relationship with his siblings and his wife’s relationship with her siblings creates the

potential for manipulation, pressure and or coercion. It does not apply to his past business associates in Pakistan because he no longer has contact with them.

Foreign Influence Disqualifying Condition (FI DC) ¶ 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence of exploitation*) was potentially raised due to Applicant's employment with a manufacturing company in Pakistan from 1993 to 1999; and his involvement in a software business set up to outsource software development in the United States to Pakistan from March 1999 to December 1999. I find that FI DC ¶ 7(e) is not applicable since Applicant is no longer involved with either company and currently has no foreign financial interests.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) applies. In order for FI MC ¶ 8(b) to apply, Applicant must meet at least one of the conditions outlined. The first condition is that there is no conflict of interest because the individual's sense of loyalty or obligation to the foreign person(s) is so minimal. This condition is not met because Applicant's relationship with his siblings who reside in Pakistan cannot be considered minimal. The second condition is that individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict in favor of the U.S. interest. Applicant meets this condition due to his deep and longstanding relationships and loyalties in the U.S. He first came to the U.S. in 1973. He attended graduate school in the U.S., earning two Masters degrees. From 1973 to 1993, he worked for various U.S. companies located in the U.S. He returned to the U.S. in 1999 and has worked for his current employer since 2000. He has not returned to Pakistan since May 1999. The people who he is closest to, his wife and five children, are all U.S. citizens and reside with him in the U.S. He owns a home in the U.S. All of his property and investments are located in the U.S.

While security concerns were raised due to Applicant's acceptance of a job in Pakistan in 1993, his sense of obligation to the U.S. is revealed by his moving to Pakistan as a U.S. citizen. He traveled on his U.S. passport. He obtained and renewed a work visa as a U.S. citizen while working in Pakistan. He did not vote in Pakistani elections. He filed U.S. income taxes during the years he worked in Pakistan. He has lived and worked in the U.S. continuously for over nine years. He has not traveled to Pakistan since May 1999. For these reasons, FI MC ¶ 8(b) applies.

FI MC ¶ 8(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*) is not applicable. Applicant's relationship with his family members who live and reside in Pakistan cannot be considered casual and infrequent. However, Applicant has resided in the U.S. over the past nine years, and his immediate family resides with him in the U.S.

### **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) 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 common sense 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. Although Applicant has siblings and in-laws who are citizens of and reside in Pakistan, security concerns are mitigated due to his significant and long standing ties within the U.S. His immediate family are citizens of and reside in the U.S. While he accepted a job in Pakistan after becoming a U.S. citizen, he traveled and worked as a U.S. citizen while in Pakistan. He moved back to the U.S. in 1999 and has not traveled to Pakistan since May 1999. All of his financial interests and property are located in the U.S. He was educated and received two graduate degrees at U.S. universities. He is well respected at his company and has received favorable performance reviews.

Applicant's lengthy educational and work history in the U.S., as well as his significant personal relationships and contacts within the U.S. outweigh any concerns raised by having relatives who are citizens and reside in Pakistan. Foreign Influence security concerns are mitigated.

### **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
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

### **Conclusion**

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

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ERIN C. HOGAN  
Administrative Judge