



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 08-11788
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

April 28, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has not mitigated security concerns pertaining to Guideline B (foreign influence). Clearance is denied.

Statement of the Case

On February 12, 2008, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On June 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 30, 2009, and DOHA received his answer on July 6, 2009. Department Counsel was prepared to proceed on July 28,

2009, and I received the case assignment on July 30, 2009. DOHA issued a notice of hearing on August 21, 2009, scheduling the case for September 23, 2009. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 3, which were received without objection. Applicant offered Applicant's Exhibits (AE) A through E, which were received without objection, and he testified on his own behalf.

I held the record open until September 30, 2009, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE F through I, which were received without objection. DOHA received the hearing transcript (Tr.) on October 1, 2009. The record closed on October 1, 2009.

Administrative Notice

Department Counsel requested that I take administrative notice of the summary of facts contained in Ex. I(A) as well as those facts in Exs. I through VII. Without objection from Applicant, I took administrative notice of facts as requested by Department Counsel. (Tr. 19-20.)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). 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). Various facts pertaining to Pakistan were derived from Exs. I(A), and I through VII as contained *infra* under the subheading "Pakistan" of this decision.

Findings of Fact

In his Answers to the SOR, Applicant admitted the SOR allegations with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following additional findings of fact.

Applicant is a 58-year-old senior technical planner, who has been employed by a defense contractor since August 2007. He is a first-time applicant for a security clearance and testified that obtaining a clearance is a condition of his continued employment. (GE 1, Tr. 21-23.)

Applicant was born in April 1952 in Pakistan, where he was raised and spent his formative years. (GE 1, Tr. 23-24.) His education in Pakistan initially consisted of "ten-year schooling" or "matriculation" followed by two years of further education or "higher secondary." He attended a university from 1969 to 1973 and was awarded a Bachelor of

Science degree in electrical engineering in May 1974. Similarly, Applicant's wife, age 46, was born in June 1963 in Pakistan, where she was raised and educated. They married in Pakistan in August 1982.

He immigrated to the U.S. in December 1992 on an F-1 (student) visa to further his education. He attended a U.S. university from January 1993 to June 1995 and was awarded a Master of Business Administration degree in July 1995. He has also been awarded two career-related professional certifications. (Response to SOR, GE 1, Tr. 24-28, 78-79.) From June 1995 to March 1998, Applicant and his spouse lived in Canada. In March 1998, they returned to the U.S. (Tr. 79-80.)

Applicant became a U.S. citizen on May 30, 2007, and his wife became a U.S. citizen on May 18, 2007. He testified that he and his wife were issued their U.S. passports shortly after becoming U.S. citizens. (GE 1, Tr. 28-34.) Applicant and his wife are dual citizens of the United States, Canada, and Pakistan. (Response to SOR.) (SOR ¶¶ 1.a. and 1.b.) It is Applicant's intent to remain permanently in the U.S. (Tr. 79-80.)

Applicant and his wife have two children, a nine-year-old son and a six-year-old daughter. (Response to SOR, GE 1, Tr. 44-45.) His spouse is a housewife. Applicant's children are U.S.-born citizens, attend public school, and are involved in local activities. (AE D, Tr. 92.)

Applicant has numerous relatives in Pakistan. His father passed away in 1968. His father made his living as a landowner renting land to local farmers. Applicant's mother is 77 years old,¹ mother of nine children and a career housewife. She is citizen and resident of Pakistan. (SOR ¶ 1.c.) Applicant speaks to his mother on the telephone "once a week." Applicant described his mother's health as somewhere between "poor" and "fair" and added that she gets around with difficulty. (Response to SOR, Tr. 40-41, 48, 51-52, 81.)

Applicant has two brothers, ages 49 and 43. Both brothers are citizens and residents of Pakistan. His 49-year-old brother manages the family property in Pakistan. He is married and has six children. His 43-year-old brother owns a tile factory. He is married and has three children. Applicant speaks to his 49-year-old brother on the telephone "two to three" times a year and speaks to his 43-year-old brother on the telephone "almost one time a week." Neither brother is associated with the Pakistani Government. (Response to SOR, GE 1, Tr. 45-52.)

Applicant has six sisters, ages 59, 54, 52, 46, 45, and 40. Applicant's 59-year-old sister is a housewife and lives with her family in the U.S. She is a dual citizen of Pakistan and the United States. (SOR ¶ 1.g.) She is married and has three children. Her husband retired from the Pakistani Navy, and after he retired, he and his family moved

¹ While every attempt was made to provide accurate ages of Applicant's family members, ages were derived from birth dates provided by Applicant, which in some cases were estimates. (GE 1, AE E, Tr. 86-88.)

to the U.S. in 1993. He is employed as a special needs teacher. (SOR ¶ 1.i.) Applicant speaks to this sister by telephone every “two to three months.” (Response to SOR, Tr. 61-63, 70-71.)

Applicant’s 54-year-old sister is a citizen and resident of Pakistan. She is married, a housewife, and has five children. Her husband is a self-employed real estate agent, and he also does some brokerage work. Applicant has not communicated with this sister in the past two years. (Response to SOR, Tr, 57-59.)

Applicant’s 52-year-old sister is a citizen and resident of Pakistan. She is a widow and lives with her (Applicant’s) mother. She does not have any children and lives off income derived from managing family property. Applicant speaks to this sister on the telephone “[a]lmost every week.” Additionally, Applicant’s 43-year-old brother and his family live with Applicant’s mother and 52-year-old widowed sister in the same house, discussed *supra* and *infra*. (Response to SOR, Tr. 56-57, 59-61.)

Applicant’s 46-year-old sister is a citizen and resident of Pakistan. She is married, a housewife, and has one child. Her husband is a sales manager for a private firm. Applicant has not communicated with this sister for two years. She is a citizen and resident of Pakistan. (Response to SOR, Tr. 54-56.)

Applicant’s 45-year-old sister is a citizen of Pakistan and Canada, and a resident of Canada. She is married, a housewife, and has three children. Her husband used to work for the Canadian Post Office, but now works in marketing in the private sector. (SOR ¶ 1.f.) Applicant speaks to this sister on the telephone about “[o]nce a year.” (Response to SOR, Tr. 52-54.)

Applicant’s 40-year-old sister is a citizen and resident of Pakistan. She is married, a housewife, and has four children. Her husband is a medical doctor. Applicant estimates that he has not spoken to her “for one year.” (Response to SOR, GE 1, Tr. 84-85.)

Applicant’s mother-in-law, age 67, and father-in-law, age 75, are dual citizens of Pakistan and Canada. Applicant’s father-in-law derives his income from revenue generated from a combination of commercial and residential properties in Pakistan. His mother-in-law is a housewife. Applicant’s in-laws apportion their time between Pakistan and Canada. (SOR ¶¶ 1.k. and 1.l.) They have a total of seven children, two males and five females. (Response to SOR, Tr. 63-66.)

Applicant’s two brothers-in-law are citizens and residents of Pakistan. (SOR ¶ 1.h.) One of his brothers-in-law owns a private elementary school in Pakistan. That brother-in-law is married and has three children. Applicant speaks to this brother-in-law on the telephone “occasionally” or every “six months,” however, his wife speaks to her brother (Applicant’s brother-in-law) on the telephone “[e]very two, three months.” (Tr. 66-68.) Applicant’s other brother-in-law is a resident of the United States and is a dual citizen of Pakistan and Canada. He is a software engineer employed by a private web

developer. He has lived in the U.S. for the “last two, three years” and not in Pakistan as alleged in SOR ¶ 1.h. Applicant speaks to this brother-in-law “once a month,” however, his wife speaks to her brother (Applicant’s brother-in-law) living in the U.S. “at least two, three times a week.” (Tr. 68-70.)

Applicant also owns the home in Pakistan where his mother, 52-year-old widowed sister, and 43-year-old brother and family live. Applicant described this property as a single family, two-story home with an approximate value in U.S. dollars of \$250,000. He acquired this home in 1977 from his mother and plans to sell it when the real estate market improves. (SOR ¶ 1.m.) (Response to SOR, Tr. 72-76.) Additionally, Applicant owns commercial real estate in Pakistan with an approximate value in U.S. dollars of \$50,000. Applicant described this property as a store under construction located in a mall. He plans to sell this property when construction is complete. (SOR ¶ 1.n.) (Response to SOR, Tr. 76-78.) Applicant also plans to renounce his Pakistani citizenship when he sells his property in Pakistan. (Tr. 97-98.)

Applicant described his family as “not involved in politics” in Pakistan or as apolitical. (Tr. 90.) Since living in the U.S., he has owned two homes, but is currently renting his family residence. (Tr. 90-91.) He estimates his U.S. net worth to be \$150,000. (AE A - AE C, Tr. 92.) Applicant spends his discretionary free time with his family. (Tr. 93.) In the last seven years, he traveled to Pakistan three times – April to May 2003, August to September 2005, and December 2005. During this timeframe, he also traveled to Canada two times – May 2004 and November 2005. The purpose of these visits was primarily to visit family members. (GE 1, Tr. 93-94.) Several family members living in the U.S. and Pakistan have visited Applicant at his home. (Tr. 94-95.)

Applicant stated his loyalties are with the U.S., that he considers himself to be a loyal U.S. citizen, and that if he were approached by anyone soliciting classified information from him, he would report such an overture to proper authority. Except as noted, all of Applicant’s assets are U.S.-based. He belongs to one professional project management-related organization and completed a number of professional training courses offered through his employers. (AE D, Tr. 100-105.) Applicant submitted his work performance evaluation for 2008 which reflects solid performance. He also received a Team Achievement Award in 2008, a cash achievement award, and an individual achievement award, all in 2008. (AE F – I.)

Pakistan²

I take administrative notice of the following facts. Pakistan is a parliamentary federal republic in South Asia with a population of nearly 170 million people. Pakistan is a low-income country, with a population that is 97% Muslim. It has a coalition government led by Prime Minister Yousef Gilani and president Asif Ali Zardari, widower of assassinated Pakistan People’s Party leader Benazir Bhutto.

² The contents of the Pakistan section are taken in whole or in part from Exs. I(A) through VII.

Although Pakistan was one of only three countries to recognize the Taliban regime of Afghanistan, after September 11, 2001, Pakistan reassessed its relations with the Taliban and pledged support to the U.S. and international coalition in Operation Enduring Freedom to remove the Taliban from power. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The leader of the Taliban, Mullah Omar, is operating openly in Pakistan. Extremists led by Pakistani Taliban (Tehrik-i-Taliban “TTP”) commander Baitullah Mehsud and other al-Qaeda extremists have re-exerted their hold over areas in the FATA and the North West Frontier Province (NWFP). The TTP has gained support by promising to fill a vacuum left by ineffective government structures.

Streams of Taliban financing crossing the border of Pakistan to Afghanistan has allowed the insurgency in Afghanistan to strengthen its military and technical capabilities. In addition to the Taliban, the FATA in Pakistan continues to be a vital sanctuary to al-Qaeda and a number of foreign and Pakistan-based extremist groups. Despite Pakistani military operations against extremists that directly challenge Pakistani government authority, Taliban, al-Qaeda, and other Pakistani militant groups continue to use Pakistan as a safe haven for organizing, training, and planning attacks against the United States and its allies in Afghanistan, India, and Europe. Al-Qaeda and other Afghan extremist groups exploit that operating environment to plan operations, direct propaganda, recruit and train operatives, and raise funds.

Overall, Pakistan has intensified counterinsurgency efforts, but its record of dealing with militants has been mixed. Pakistan has demonstrated determination and persistence in combating militants it perceives to be dangerous to Pakistan’s interests, particularly those involved in attacks in settled areas, but it has not consistently pursued militants focused on Afghanistan, and still considers militant groups to be important to its efforts to counter India’s military and economic advantages.

The U.S. Department of State has defined terrorist safe havens as ungoverned, under-governed, or ill-governed areas of a country and non-physical areas where terrorist groups that constitute a threat to U.S. national security interests are able to organize, plan, raise funds, communicate, recruit, train, and operate in relative security because of inadequate governance capacity, political will, or both. For those reasons discussed above and others, the U.S. Department of State has concluded that the Afghan-Pakistan border and the FATA, NWFP, and the Baluchistan areas of Pakistan are terrorist safe havens.

The Department of State warns U.S. citizens of the risks of traveling to Pakistan in light of the threat of terrorist activity, specifically the presence of al-Qaeda, Taliban elements, and indigenous sectarian groups that pose a danger to American citizens. International terrorist organizations, including al-Qaeda, continue to carry out attacks in Pakistan. In the last three months of 2009, Pakistan-based extremists and al-Qaeda conducted at least 40 suicide terrorist attacks in major cities in Pakistan, killing about 600 Pakistani civilians and security force personnel. Terrorists and their sympathizers

have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit. Also, since 2007, several American citizens throughout Pakistan have been kidnapped.

The human rights situation in Pakistan remains poor. Major problems include extrajudicial killings, torture and disappearances. Additional problems include poor prison conditions, arbitrary arrest, widespread government corruption, rape, honor crimes, and widespread trafficking in persons. The military operations in the FATA and NWFP resulted in the deaths of approximately 1,150 civilians, and militant attacks in the FATA and NWFP killed 825 more civilians. The Pakistani government also maintains several domestic intelligence services that monitored politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents. Credible reports indicated that authorities routinely used wiretaps and intercepted and opened mail without the requisite court approval, as well as monitoring mobile phones and electronic messages.

In addition to al-Qaeda, the Taliban, and other insurgents and militants, foreign terrorist organization Lashkar e-Tayyiba (LT) also operates out of Pakistan. The LT is the prime suspect for the November 2008 Mumbai attacks and is one of the largest and most proficient of the traditionally Kashmiri-focused militant groups. The LT has conducted a number of operations against Indian troops and civilian targets since 1993.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AGs. In addition to brief introductory explanations for each guideline, the AGs 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 commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have 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

Under Guideline B, the Government’s concern is set out in AG ¶ 6 as follows:

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

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

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign own or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

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.³

Applicant has frequent contacts and a close relationship of affection or obligation with his mother and siblings, who are citizens and residents of Pakistan, as well as with some of his in-laws, who are citizens of Pakistan. The closeness of these relationships is shown by Applicant's telephone contacts with his relatives, directly or through his wife, his commercial and residential property in Pakistan, and family visits to Pakistan.

The threat of terrorism in Pakistan is high. Over the years, Pakistan has suffered from numerous terrorist attacks. Terrorists in Pakistan target U.S. interests to exploit and undermine U.S. national security interests. They conduct intelligence activities as effectively as state intelligence services. There is also the possibility that terrorists, extremists, or criminal organizations may exploit the opportunity to obtain sensitive or classified U.S. information.

Applicant's case requires the recognition that Pakistan and the United States have a special political and economic relationship. At the same time it is also necessary to recognize that Pakistan is on the front lines in the war against international and regional terrorism and, despite the efforts of its government, there are individuals and groups within Pakistan who have acted and continue to act in a hostile manner to U.S. interests.

The Government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.

Four Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

³ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Considering the record as a whole, I conclude that only mitigating condition AG ¶ 8(b) partially applies. AG ¶ 8(b) partially applies because Applicant has developed a relationship and a sense of loyalty with the United States. He has continuously lived in the United States with his family for approximately 12 years. He and his wife are naturalized U.S. citizens and a significant portion of their financial and business interests are in the United States. Applicant's two children are U.S.-born citizens. He has established himself as an American citizen and he along with his family have integrated into their local community. Applicant has a track record of diligent labor with his employer. Although this mitigating condition is partially applicable, it is insufficient to overcome the foreign influence security concerns.

He has contacts and close relationships with his mother, his siblings in Pakistan, and his sister living in the United States as well as his in-laws in Canada. They all have contacts and a close relationship with family members in Pakistan.

AG ¶ 8(a) and 8(c) do not apply. Applicant did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his Pakistani family] and the interests of the U.S." His frequent contacts and close relationships with mother and siblings in Pakistan could potentially force him to choose between the United States and Pakistan. He did not meet his burden of showing there is "little likelihood that [his relationships with his Iranian family members] could create a risk for foreign influence or exploitation."

AG ¶ 8(e) does not apply. The cumulative value of Applicant's real estate in Pakistan approximates \$200,000, by his estimates, and exceeds the value of his U.S.-

based net worth. Although he testified that he plans to sell his Pakistani properties at some point in the future, the fact remains he owns them now and they comprise a substantial amount of his assets.

On the other hand, there is no evidence that his family members or extended family members work for or associated with the Pakistani government or any news media. There is no evidence that the Pakistani government has approached any of his Pakistani family for any reason. There is no evidence that his family living in Pakistan currently engages in activities which would bring attention to themselves or that they are even aware of her work.

Notwithstanding, foreign influence mitigating conditions cannot be fully applied in this case, and the security concerns cannot be fully mitigated because there is no reason for Pakistan or any group hostile to the U.S. to contact his relatives about Applicant until he receives access to classified information. Even taking for granted that his Pakistani family members currently have low-key non-controversial lifestyles, and that the Pakistani government or a group hostile to the U.S. has not contacted them about Applicant in the past, such factors are insufficient to mitigate the security concerns.

Nothing in Applicant's testimony or demeanor suggested he was not a loyal U.S. citizen and a credit to his adopted country. However, despite Applicant's sincere demeanor and his assurances that he is not a security risk, the circumstances of his family situation argue otherwise. He was unable to put forward sufficient evidence that could mitigate the security discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information.

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.

Applicant strongly averred his loyalty to the United States, he considers himself to be an American, and he desires to continue his work for his Government contractor employer. Applicant has lived in the U.S. for 12 years and has been a naturalized citizen for almost four years. When he became a U.S. citizen, he swore allegiance to the United States. His wife is also a naturalized U.S. citizen and his two children are U.S. born citizens.

Notwithstanding, Applicant travelled to Pakistan on three separate occasions during the last seven years. He has numerous immediate family members, who are citizens and residents of Pakistan. Applicant and his family enjoy a close relationship. He has strong ties of affection and or obligation to his mother and siblings. Because Applicant's family members live in Pakistan, they are vulnerable to coercion or exploitation by Pakistan or by groups hostile to the U.S. Applicant's statement about his loyalty to the United States is credible. He has the respect and trust of his employer.

Numerous circumstances weigh against Applicant in the whole person analysis. The political situation in Pakistan is volatile and groups hostile to U.S. interests are active. Applicant was born in Pakistan and spent the first 40 years of his life there. He met and married his wife in Pakistan. He received his education through college in Pakistan. He has family members who are Pakistani citizens living in Pakistan and he and his wife remain in touch with these relatives. Applicant has frequent and non-casual direct and vicarious contact with his mother and his siblings living in Pakistan. He has significant real estate holdings in Pakistan and maintains his Pakistani citizenship. These cumulative factors create a risk of foreign pressure or attempted exploitation because there is always the possibility that Pakistani agents or terrorists may attempt to use Applicant's family members living in Pakistan to obtain sensitive or classified information about the United States.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has not fully mitigated or overcome the Government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a. – 1.e.:	Against Applicant ⁴
Subparagraphs 1.f. – 1.g.:	For Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	For Applicant
Subparagraphs 1.j. – 1.n.:	Against Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge

⁴ Except findings for SOR ¶ 1.h. are amended to read, "Two of your brothers-in-law are citizens of Pakistan. One brother-in-law is a resident of Pakistan, and the other brother-in-law is also a citizen of Canada and a resident of the United States." (See p. 4, *supra*.)