



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-05018
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel  
For Applicant: *Pro se*

August 26, 2010

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On December 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant. The SOR enumerated security concerns arising under Guideline B (Foreign Influence), Guideline F (Financial Considerations), and Guideline E (Personal Conduct). 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).

In his January 19, 2010, answer to the SOR, Applicant responded to the allegations raised in the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated May 19, 2010. Applicant received the FORM on June 26, 2010, but did not submit any additional information for consideration. The case was assigned to me on August 11, 2010. Based on a review of the case file and exhibits, security clearance is denied.

## Administrative Notice

The Government requested administrative notice of certain facts and materials regarding the Islamic Republic of Pakistan (Pakistan). Eight documents were included in the FORM as Items I – VIII. The documents were published by the U.S. Department of State (I-III, VI, VIII), U.S. Senate committees (IV, VII), or the Joint Chiefs of Staff (V) between 2008 and 2010. Administrative notice is taken of both the Government's summary of facts and Items I–VIII.

Pakistan is a parliamentary federal republic. After September 11, 2001, Pakistan supported the United States and an international coalition in Operation Enduring Freedom to remove the Taliban from power. Despite this effort, members of the Taliban remain in various parts of Pakistan. The leader of the Taliban, Mullah Omar, is openly operating in Pakistan, as are extremists from the Pakistani Taliban and Al-Quaida.<sup>1</sup> Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities.<sup>2</sup> Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.<sup>3</sup>

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens.<sup>4</sup> Al-Quaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high profile government, military, and western-related sites.<sup>5</sup> Nearly 1,000 individuals were killed in 2008 due to such attacks.<sup>6</sup> The U.S. State Department warns U.S. citizens of the risks of traveling to Pakistan in light of terrorist activity. Since 2007, several American citizens present in Pakistan have been kidnapped for ransom or other personal reasons.<sup>7</sup>

The human rights situation in Pakistan remains poor. Extrajudicial killings, torture, and disappearances occur. Arbitrary arrests, governmental and police corruption is widespread, and the Pakistani government maintains several domestic intelligence agencies to monitor politicians, political activists, suspected terrorists, the media, and suspected foreign intelligence agents.<sup>8</sup> Credible reports indicate that authorities use wiretaps and monitor mail without the requisite court approval, and also

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<sup>1</sup> FORM at 3.

<sup>2</sup> *Id.* at 3-4.

<sup>3</sup> *Id.* at 4-5.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.* at 8.

monitor phones and electronic messages.<sup>9</sup> In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems.<sup>10</sup>

### Findings of Fact

Applicant is a 61-year-old linguistic and cultural advisor who has worked for the same defense contractor since June 2007. His current position follows a decade of sporadic work in diverse fields, including postal delivery and theme park retail merchandising, with multiple periods of intervening unemployment.<sup>11</sup> Applicant is divorced. He has earned a program certificate from a teacher training school. On July 24, 2007, Applicant completed a security clearance application (SCA). He has been working abroad since at least the beginning of 2010.<sup>12</sup> In his response to the SOR, Applicant provided scant information related to the Guideline B and Guideline E allegations, and submitted no documentary evidence regarding the Guideline F allegations.

Born and raised in Pakistan, Applicant visited the United States in 1982. He then immigrated to the United States in 1984. Applicant applied for U.S. citizenship in approximately 1985.<sup>13</sup> He became a naturalized U.S. citizen in November 1991. Applicant was issued a U.S. passport in January 2002. Since his emigration, Applicant has visited Pakistan about every two and a half years in order to visit his family members living there. His last trip to Pakistan was in May 2008. He has also visited the United Arab Emirates (UAE) to visit two of his brothers and their wives. His last trip to that country was in April 2009.<sup>14</sup>

Applicant's parents are deceased, but he still has a large family living abroad. Applicant has two married brothers who are citizens and residents of Pakistan, and two married brothers who are Pakistani citizens residing in the UAE. They are employed as a real estate speculator, a utility company supervisor, an electrical company supervisor, and a cargo shipping supervisor, respectively. His sisters-in-law are Pakistani citizens

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 8. See also FORM Attachment IV (Annual Threat Assessment, Statement Before the Committee on Armed Services, United States Senate, Director of the Defense Intelligence Agency, Mar.10, 2009) at 12.

<sup>11</sup> See FORM, Item 4 (Security Clearance Application, dated Jul. 24, 2007) at 11-18.

<sup>12</sup> Response to the SOR, dated Jan. 19, 2010.

<sup>13</sup> FORM Item 6 (Interrogatories, Testimonies, Interview of Apr. 28, 2009) indicates Applicant "emigrated to the U.S. in 4/84. . . . He applied for U.S. citizenship in approximately 1995 and was naturalized on 11/19/91. . . ." Given the sequence of the events and the juxtaposition of the dates, I conclude the 1995 date was meant to be 1985.

<sup>14</sup> *Id.* Applicant also visited Saudi Arabia in 2000 for a religious event before continuing his trip into Pakistan.

living with Applicant's brothers. Applicant also has four sisters who are citizens and residents of Pakistan. One sister is single and works around the family home. One sister is a housewife and the widow of a painter. His other two sisters are housewives, married to husbands who are citizens and residents of Pakistan. One of their husbands is a former physician's assistant, the other is a medical practitioner serving in the Pakistani Army at a military hospital.<sup>15</sup> Applicant has telephonic contact with his siblings and their spouses "once or twice a month and sees them on average once every two and a half years when [he] visits either Pakistan or the [UAE]."<sup>16</sup> Applicant also has over 30 nephews and nieces, with whom contact is limited to his visits to Pakistan and the UAE.

Applicant "does not have contact with any other foreign nationals. [He] is confident that all of his relatives support the general policies and interests of the U.S. Government."<sup>17</sup> He does not believe he has ever been monitored by any intelligence agencies, and he has never been contacted by foreign intelligence personnel. He has not discussed his work with any of his family members and no family members have asked about his work.<sup>18</sup>

When Applicant completed his security clearance application (SCA) in July 2007, he answered "no" to questions inquiring whether he had any delinquent debts that were delinquent for over 180 days in the preceding seven years, and whether he was currently 90 days delinquent on any debts. Applicant, for whom English is a second language, was "unsure" as to the wording and meaning of the questions.<sup>19</sup> When the nature of the questions was explained to him during an April 2009 interview, he noted that he had some medical bills that he could not currently afford to pay.<sup>20</sup> In providing his SCA answers, he did not intentionally attempt to mislead regarding his finances.<sup>21</sup>

Applicant's credit report reflects several negative entries. Those entries are for delinquent debts and are represented in the SOR as allegations ¶¶ 2.a-2.j. Applicant denies having any obligations owed to the creditors noted in allegations ¶¶ 2.a, 2.g, 2.i,

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<sup>15</sup> FORM Item 6, *supra*, note 13.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Response to the SOR, *supra*, note 12.

<sup>20</sup> *Id.* See also FORM Item 6, *supra*, note 13.

<sup>21</sup> *Id.*

and 2.j, representing approximately \$6,523.<sup>22</sup> He submitted no evidence that he has disputed these four entries with the credit reporting bureaus. With regard to allegation ¶ 2.b, for an alleged debt of approximately \$545, Applicant states that he was told by the creditor that it had no record of his having an account.<sup>23</sup> Applicant wrote that he paid the debts noted in allegations ¶ 2.c and ¶ 2.d, for approximately \$28,085. He provided confirmation numbers regarding these two debts, but he did not explain how the balances were paid or what the confirmation numbers represented. There is no documentary evidence that these debts have been addressed.<sup>24</sup> In addition, Applicant wrote that he is working on taking steps to address the debts noted in allegations ¶¶ 2.e, 2.f, and 2.h, representing an approximate debt of \$1,321, but he did not describe what those steps are.<sup>25</sup>

Most if not all of the accounts at issue are for medical or medically-related services.<sup>26</sup> Applicant stated that he believed any medical accounts on his credit report were probably for medical services provided when he was without medical insurance.<sup>27</sup> Applicant intends to honor his medical debts when he has the salary to pay them.<sup>28</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All available, reliable information about the

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<sup>22</sup> Response to the SOR, *supra*, note 12. (In denying liability for these debts, Applicant states that he either has no knowledge of the accounts or never received a bill for the services alleged).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See FORM Item 2, SOR, dated Dec. 10, 2009.

<sup>27</sup> FORM, Item 6, *supra*, note 13.

<sup>28</sup> *Id.*

person, past and present, favorable and unfavorable, must be and were considered 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 my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>29</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>30</sup>

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 an 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>31</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>32</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>33</sup> It is merely an indication that the

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<sup>29</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>30</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Executive Order 10865 § 7.

applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline B (Foreign Contacts), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) to be the most pertinent to the case. Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

## **Analysis**

### **Guideline B – Foreign Influence**

The concern under Guideline B is that 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. The adjudicator 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are discussed in the conclusions below.

The country at issue is Pakistan. The presence of terrorist groups in that country poses significant concern, as does the anti-Western sentiment expressed by those groups. At present, Pakistan is unable to control extremist factions within its borders. Moreover, Pakistani officials have been known to disregard human rights and monitor individuals within its borders. Such factors demand that review of the facts in this case be conducted with heightened scrutiny.

Applicant has several siblings and in-laws who are citizens of Pakistan and residents of either Pakistan or the UAE. He maintains regular telephonic contact with them all, and he visits them regularly. Such contacts are sufficient to raise Foreign Influence Disqualifying Conditions 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 exploitation, inducement, manipulation, pressure, or coercion) and 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). With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

Applicant has immediate family members who are citizens and residents of Pakistan and he also has family members who are Pakistani citizens residing in the UAE. Based on the available facts, it can be assumed that he is close to these family members and their spouses. He regularly speaks with them on the telephone and, despite the presence of terrorists in that country and U.S. State Department warnings, he has visited his family in Pakistan about every two and a half years. While he does not believe his travels have been monitored, he seems to be aware that it is a very real possibility. Given such facts, Foreign Influence 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.) does not apply.

Based on Applicant's regular telephonic and personal contact with his siblings and their spouses, Applicant and his siblings appear to have a familial bond. In the absence of facts concerning his life and ties within the United States, such bonds are sufficiently significant to obviate application of AG ¶ 8(b) (there is no conflict of interest, either because the individual's sense of loyalty to 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) and AG ¶ 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). No other mitigating conditions apply.

Foreign influence security concerns arise when foreign contacts may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests. Scrutiny of such potential is heightened when the country is known to target U.S. citizens to obtain protected information or is associated with a risk of terrorism. Pakistan raises such concerns. Here, Applicant has understandable bonds with family members who are citizens of Pakistan, and he often visits them in their country. Such relationships can be manipulated by authorities or terrorists seeking either to harm Americans or American interests, or gain sensitive information. Based on the scant information provided by Applicant, Foreign Influence security concerns remain unmitigated.



## Guideline F – Financial Considerations

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”<sup>34</sup> The guideline sets out several potentially disqualifying conditions. Here, Applicant’s credit report reflects over \$35,000 in delinquent debt. Applicant admits some of the debts noted are owed and remain unpaid. He stated that he has satisfied about \$28,000 of the debts noted at SOR allegations ¶¶ 2.c – 2.d, but provided no documentation supporting this statement. Given such facts, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

In the past decade, Applicant experienced multiple periods of unemployment. At various points during that time, he apparently was without medical insurance. Lacking such insurance when he was unemployed and needed health care, Applicant acquired delinquent debt. In 2007, he acquired stable employment as a linguistic and cultural expert. To date, however, he has yet to reach a salary level at which he feels he can honor his delinquent debts. Such circumstances are sufficient to raise Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment) and FC MC AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances).

Applicant wrote that he has satisfied about \$28,000 of the debts at issue. While he provided a confirmation number regarding 2009 payments on those accounts, those confirmations numbers have little significance in isolation. There is no indication as to what those numbers reference or what they confirm (*ie.* account payment confirmation, check transaction confirmation, etc.) He denies liability for some debts, but provided no evidence that he has disputed them with either the alleged creditors or the credit reporting bureaus. In sum, there is no documentary evidence supporting his contention that he has worked toward addressing any of the debts at issue. Therefore, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Furthermore, in failing to provide any tangible evidence regarding his finances, Applicant also failed to note whether he has received financial

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<sup>34</sup> AG ¶ 18.

counseling. Consequently, FC MC ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control) cannot apply.

Although Applicant raised facts which tend to mitigate the creation of some of his delinquent debt, he provided no documentary evidence reflecting any attempts to address the debts at issue. In declining a hearing, Applicant chose to rely on a written record that is devoid of documentary evidence regarding any efforts to address those debts. Given the record as a whole, financial considerations security concerns remain unmitigated.

### **Guideline E - Personal Conduct**

Under Guideline E, security concerns arise because “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.”<sup>35</sup> In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.<sup>36</sup> Personal conduct security concerns were raised when Applicant denied having any delinquent debts on his 2007 SCA. The SOR alleges several delinquent debts are owed by Applicant, based on his credit report. Such allegations, if substantiated, are sufficient to raise Personal Conduct Disqualifying Condition AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities). Consequently, the burden shifts to Applicant to mitigate the resultant security concerns raised by the allegations.

Under the facts presented, there is no evidence that Applicant intended to conceal or mislead when he denied having any delinquent debts. Applicant affirmatively has stated that he did not intend to mislead when he answered questions related to his finances. Moreover, it is apparent that English is Applicant’s second language; it is not the language for which he is currently valued for his linguistic expertise. He explained that he initially failed to comprehend the meaning of the financial questions, and that he later corrected his response when investigators specifically asked him about some older medical bills he could not yet afford to repay. Absent actual evidence that he intentionally falsified his answers to SCA questions regarding his finances, and in light

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<sup>35</sup> AG ¶ 15.

<sup>36</sup> *Id.*

of both his comments and the scant evidence of record, AG ¶ 16(a) does not apply. Under the unique circumstances regarding this particular Applicant, however, I find that application of AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) is sufficient to mitigate the personal conduct security concerns alleged.

### **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). Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a mature individual who recently began using his native linguistic and cultural knowledge to conduct specialized and significant work abroad. Prior to that, he had an erratic employment record. Despite that record, it appears he endeavored to seek stable employment to support himself. Little more can be said, however, given the scant personal and financial information provided by Applicant in response to the SOR and the FORM.

Without additional facts concerning his life in the United States, foreign influence security concerns can only be analyzed with reference to his foreign relatives and his trips abroad. Such facts do not mitigate foreign influence security concerns. Moreover, without any documentary evidence concerning his efforts to address the debts at issue in the SOR, financial considerations security concerns remain unmitigated. The most direct, relevant, and material information Applicant provided is with regard to why he answered "no" to questions regarding whether he had delinquent debts on his SCA. Under the circumstances depicted, his explanation mitigates personal conduct security concerns.

In these cases, the burden is placed squarely on an applicant to overcome security concerns. With foreign influence and financial considerations security concerns remaining, the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Such a conclusion is not a reflection on an applicant's patriotism or loyalty to the United States. It is merely a

determination that an applicant failed to carry his burden. In light of the security concerns remaining unmitigated, clearance is denied.

### **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
Subparagraph 1.a-1.g	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a-2.j	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a	For 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 eligibility for a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge