



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-01169

**Appearances**

For Government: Fahryn E. Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

January 20, 2011

**Decision**

HARVEY, Mark, Administrative Judge:

In 1966, Applicant was born in Pakistan. In 1988, he immigrated to the United States. In 1996, he became a U.S. citizen. His spouse and six children were born in the United States and are U.S. citizens. Although his parents were scheduled to immigrate to the United States from Pakistan in the near future, they continue to be at risk until they depart Pakistan. Foreign influence concerns are not mitigated. Access to classified information is denied.

**Statement of the Case**

On November 21, 2006, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On June 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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) promulgated by the President on December 29, 2005. The

SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 9, 2010, Applicant responded to the SOR. (HE 3) On August 23, 2010, Department Counsel was prepared to proceed. On August 25, 2010, the case was assigned to me. On September 22, 2010, DOHA issued a hearing notice setting the hearing for October 18, 2010. (HE 1) The hearing was held on October 18, 2010, as scheduled. At the hearing, Department Counsel offered two exhibits (GE 1-2) (Transcript (Tr.) 17-18), and Applicant offered 24 exhibits. (Tr. 19-26, 29; AE A-W) I admitted GE 1-2 and AE A-W. (Tr. 18, 84-85) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3)

Applicant provided the decisions of Administrative Judge Howe in ISCR Case 02-32673 (A.J. June 17, 2003) and Administrative Judge Metz in ISCR Case No. 05-14555 (A.J. Sept. 29, 2006). (Tr. 22-26; AE C-D) These two decisions discuss foreign influence relating to relatives of those two Applicants who were living in Pakistan. The two decisions conclude security concerns are mitigated. (HE C-D) The decisions by administrative judges provide persuasive albeit non-binding authority. On October 27, 2010, I received the hearing transcript. On November 25, 2010, I received eight additional exhibits from Applicant, which were admitted without objection. (AE X-EE) On January 5, 2011, and January 19, 2011, I received emails from Applicant which were admitted without objection. (AE FF, GG)

### **Procedural Ruling**

Department Counsel requested administrative notice of facts concerning the Pakistan. (Tr. 14; Administrative Notice Request, July 27, 2010) Department Counsel provided supporting documents to show verification, detail and context for these facts in the Administrative Notice request. *Id.* Applicant did not object to me taking administrative notice of all of the facts in all of the documents. (Tr. 14) See the Pakistan section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on Pakistan.

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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to 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).

## Findings of Fact<sup>1</sup>

Applicant admitted the underlying facts alleged in the SOR. (HE 3) After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

In 1966, Applicant was born in Pakistan. (Tr. 6, GE 1) He immigrated to the United States in 1988 when he was 21 years old. (Tr. 18, 39-40; GE 2 at 1) He became a U.S. citizen in 1996. (Tr. 39) He is an engineer, who has been employed by a major aircraft manufacturing company for the last nine years. (Tr. 39)

Applicant married in 1991 and divorced in 1998. (Tr. 7, 41; GE 2 at 2) He met his first wife in the United States, and she is a U.S. citizen. (GE 2 at 1) He has five children from his first marriage, who are ages 15, 15, 16, 18, and 20. (Tr. 7, 44-45; GE 2 at 2) His first wife's father was in the U.S. Navy serving in the United Kingdom when she was born. (Tr. 60; GE 2) His five children were born in the United States and reside in the United States. (Tr. 44) He has never taken his children to Pakistan. (Tr. 45)

Applicant married his current spouse in 2000, and has one four-month-old child with his spouse. (Tr. 7, 44) His spouse and child were born in the United States, and they live in the United States. (Tr. 44, 60) In 2001, he received a bachelor's degree in aerospace engineering from a U.S. university. (Tr. 8) The only time he took his spouse to Pakistan was in 2005. (Tr. 45-46; GE 2 at 8)

Applicant owns a home and a rental property in the United States. (Tr. 41) His mortgage on his residence is \$198,000, and his equity is about \$15,000. (Tr. 41) His mortgage on the rental property is \$75,000, and his equity is about \$15,000. (Tr. 42) He has approximately \$100,000 in a U.S. 401(k) account, and has approximately \$20,000 in U.S. investment, checking, and savings accounts. (Tr. 41-43) He does not have any non-United States investments. (Tr. 43)

There is no derogatory information concerning Applicant's police or financial records. He has never been fired from a job. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

Applicant's father, mother, and two sisters are citizens and residents of Pakistan. (SOR ¶¶ 1.a and 1.b; HE 2) His father, who is a retired airline employee, was born in India in 1936. (GE 2 at 7) His mother is not employed outside their home. (Tr. 61) In November 2009, Applicant's parents applied for a visa to enter the United States. (AE A, B) Applicant has sponsored his parents for immigration into the United States. (SOR ¶ 1.c; Tr. 19; HE 3) On November 1, 2010, Applicant filed documents with the U.S. State Department, including \$400 for each of his parents, to process their visas. (AE

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's SF-86 (GE 1) or his investigative personal subject interview (PSI). (GE 2)

AA, BB, CC, DD, EE) He also provided their Immigrant Visa and Alien Registration documents. (AE DD, EE) He frequently communicates with his parents as he arranges their immigration to the United States. (Tr. 61) At his hearing, Applicant said he expected his parents to permanently immigrate to the United States around November 1, 2010. (Tr. 48-49) On January 5, 2011, Applicant advised that on December 27, 2010, he sent photographs of his parents to the Immigration and Naturalization Service, and that his parents still needed to complete an interview at the embassy in Pakistan. The interview is scheduled for early March 2011. (AE GG) He estimated it will be two or three months before they arrive in the United States. (AE FF)

Applicant has two sisters living in Pakistan. (Tr. 20-21) They are both older than Applicant. (Tr. 20-21) One sister is an accountant, and the other is a housewife. (Tr. 21) One husband works for a car manufacturing company, and the other works in an office. (Tr. 21) Applicant has once yearly telephone contact with his sisters, who are citizens and residents of Pakistan. (GE 2 at 7) He also visited his sisters when he went to Pakistan. (GE 2 at 7)

In 2005, Applicant sponsored the daughter-in-law of a friend into the United States. (SOR ¶ 1.d; GE 2 at 8; Tr. 27) He indicated to the U.S. State Department that he would financially support her, if necessary, after she arrived in the United States. She moved to a state that is more than a 1,000 miles from Applicant's state. He did not have any need to provide support or assistance to her.

Applicant traveled to Pakistan in 1997, 2002, 2005, and 2007. (SOR ¶ 1.e; HE 3; Tr. 46) His visits to Pakistan have been to the city of Karachi, and his sisters live in Karachi. (Tr. 35-38) Karachi is located in the most southern section of Pakistan, and the primary area of terrorism is in northern Pakistan on the Afghanistan border. (Tr. 36)

Applicant has two uncles, and several cousins who live in the United States. (Tr. 46) Applicant is a member of his company's flying club. (Tr. 47) He is also involved with several U.S. charitable associations. (AE G)

## **Character Evidence**

Applicant's technical leader at his employment for the last six years, two co-workers at his current employment, a friend, and a previous employer describe Applicant as friendly, loyal, ethical, organized, professional, faithful, responsible, trustworthy, and diligent. (AE H, I, J, L, M) He is a valuable asset and is highly recommended for continued employment with his employer. (AE J, L)

Applicant's performance evaluations document his hard work and contributions to his employer. (AE N) These evaluations describe his increasing professionalism, expertise, and leadership. (AE N) His employer has promoted him two levels over the past nine years. (AE N)

A Chief U.S. Magistrate Judge has known Applicant for ten years, and is his friend. (AE K) She lauds Applicant's integrity, high standards, and trustworthiness. (AE

K) She emphasized that he is professional, responsible, and has never engaged in illegal behavior. (AE K)

## **Pakistan**

Pakistan is a parliamentary federal republic with a population of more than 167 million people. 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 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 operates openly in Pakistan, as are extremists from the Pakistani Taliban and Al Qaida. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. Pakistan has intensified its counterinsurgency efforts, but its record for dealing with militants has been mixed.

The U.S. Department of State has defined several areas of Pakistan to be terrorist safe havens. The security situation in Afghanistan worsened in 2008, driven in part by insurgent access to safe havens in western Pakistan through the porous Afghan-Pakistan border. In early 2009, the FATA in Pakistan continued to provide vital sanctuary to Al Qaida and a number of foreign and Pakistan-based extremist groups. Al-Qaida exploits the permissive operating environment to support the Afghan insurgency, while also planning attacks against the United States and Western interests in Pakistan and worldwide. Together with the Afghan Taliban and other extremists groups, Al Qaida uses this sanctuary to train and recruit operatives, plan and prepare regional and transnational attacks, disseminate propaganda, and obtain equipment and supplies. Al Qaida and its extremists have waged a campaign of destabilizing suicide attacks throughout Pakistan. The attacks targeted high profile government, military, and western-related sites. Nearly 1,000 individuals were killed in 2008 due to such attacks. In the last three months of 2009, terrorists based in Pakistan conducted at least 40 suicide terrorist attacks in major cities of Pakistan and killed about 600 Pakistani civilians and security force personnel.

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. 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. Credible reports indicate that authorities use wiretaps and monitor mail without the requisite court approval, and also monitor phones and electronic messages. In addition, Pakistan continues to develop its own nuclear infrastructure, expand nuclear weapon stockpiles, and seek more advanced warhead and delivery systems. In the aftermath of Pakistan's development of nuclear weapons, the United States cut-off military aid to Pakistan for several years.

In 2005, Karachi had a population of more than 11.5 million people. It is hundreds of miles from the safe havens and contested areas on the border with Afghanistan. In the period of 1997 to 2007, there were several bombings and other terrorist incidents in Karachi.<sup>2</sup>

After September 11, 2001, Pakistan pledged its alliance with the United States in counterterrorism methods. Pakistan committed to elimination of terrorist camps on the Pakistan-Afghanistan border and subsequently sent thousands of troops and sustained hundreds of casualties in this effort. Overall, Pakistan has intensified counterinsurgency efforts, and demonstrated determination and persistence in combating militants. The United States is engaging in a substantial effort to bolster Pakistan's military forces and security. In 2003, President Bush announced that the United States would provide Pakistan with \$3 billion in economic and military aid over the next five years beginning in 2005.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." See

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<sup>2</sup>See U.S. Department of State, *Background Note: Pakistan*, July 21, 2010, at 12 (Attachment I to Department Counsel's Administrative Notice Request).

Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guideline B (foreign influence) with respect to the allegations set forth in the SOR.

### **Foreign Influence**

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

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.

AG ¶ 7 indicates two conditions that could 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; and

(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.

AG ¶¶ 7(a) and 7(b) do apply because of Applicant's relationships with his parents, who are living in Pakistan. Applicant was born in Pakistan. At the time of his hearing, his parents were living in Pakistan, and they are expected to remain there for several additional months.

Applicant's communications with his parents are frequent. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has not attempted to rebut this presumption. Applicant's relationships with his parents living in Pakistan are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." His relationships with residents of Pakistan create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his parents who are in Pakistan. For example, if the Pakistan Government or terrorists in Pakistan wanted to expose Applicant to coercion, it could exert pressure on his parents. Applicant would then be subject to indirect coercion through his relationship with his parents and classified information could potentially be compromised.

The mere possession of close family ties with a family member living in Pakistan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United



States. The relationship of Pakistan with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his parents living in Pakistan do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his parents living in Pakistan who might be coerced by terrorists or other Governmental entities in Pakistan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Pakistan seek or have sought classified or economic information from or through Applicant, or his parents living in Pakistan, it is not possible to rule out such a possibility in the future. Applicant's communications with his parents living in Pakistan are frequent, and he continues to feel an obligation to them and affection for them. Applicant's concern for his parents is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

AG ¶¶ 8(a), 8(b), 8(c), and 8(f) have limited applicability. Applicant traveled to Pakistan in 1997, 2002, 2005, and 2007. Applicant has frequent contact with his parents, who live in Pakistan. Applicant has quite limited contacts with his siblings living in Pakistan, and security concerns relating to his siblings are fully mitigated. The amount of contacts between an Applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced through their relatives. Because of his connections to his parents, Applicant is not able to fully meet his burden of showing there is “little likelihood that [he and his spouse’s relationships with relatives who are residents of Pakistan] could create a risk for foreign influence or exploitation.” It is evident that he feels an obligation to his parent’s welfare.

Applicant has “deep and longstanding relationships and loyalties in the U.S.” He has strong family connections to the United States. His spouse, six children, and several other relatives are U.S. citizens and live in the United States. Applicant owns a house in the United States and has substantial investments in the United States.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his parents who live in Pakistan. There is no evidence that terrorists, criminals, the Pakistan Government, or those conducting espionage have approached or threatened Applicant or his parents in Pakistan to coerce Applicant or his parents for classified or sensitive information. Applicant has not yet received access to classified information and as such, there is a reduced possibility that Applicant or Applicant’s family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States’ recent relationship with Pakistan, and especially Pakistan’s systematic human rights violations and most of the ever present danger from terrorists and those who seek to damage U.S interests. The conduct of terrorists in Pakistan makes it more likely that terrorists would attempt to coerce Applicant through his parents living in Pakistan, if the terrorists determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with his parents living in Pakistan. Applicant is not required to report his contacts with his parents living in Pakistan.

AG ¶ 8(f) has some applicability. Applicant has substantial property interests in the United States, which include his employment in the United States, and the value of his home and investments in the United States. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised in this case. Applicant does not own any property or have any investments in Pakistan or elsewhere outside the United States.

In sum, the primary security concern is Applicant's close relationships with his parents, who live in Pakistan. His parents, who live in Pakistan, are readily available for coercion. Although the Pakistan Government's failure to follow the rule of law further increases the risk of coercion, the major cause of concern is the prevalence of terrorists in Pakistan. The concern about his visits to Pakistan in 1997, 2002, 2005, and 2007 are mitigated because they are not recent. But for his parents living in Pakistan, all foreign influence security concerns would be mitigated.

### **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 relevant 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. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Appellant has strong connections to the United States. In 1988, he immigrated to the United States. In 1996, he became a U.S. citizen. He is an engineer and has been employed by the same firm for the last nine years. His spouse and six children are U.S. citizens and live in the United States.

There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. The Chief U.S. Magistrate Judge and several colleagues and supervisors at work lauded Applicant's dedication, diligence, and responsibility. He is loyal to the United States and he considers the United States to be his home. Applicant's demeanor, sincerity, and honesty at his hearing are important factors militating towards approval of his access to classified information.

The circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. Applicant's parents live in Pakistan. Terrorists have killed hundreds of Pakistani citizens in the last two years, and would not hesitate to coerce Applicant through his parents to obtain classified information. Applicant had frequent contact with his parents and is committed to their welfare. Applicant's parents have made important steps towards moving from Pakistan to the United States, and once they have left Pakistan security concerns will be substantially alleviated.

A Guideline B decision concerning Pakistan must take into consideration the geopolitical situation in Pakistan, as well as the dangers existing in Pakistan.<sup>3</sup> Although there is less danger of terrorist attack in Karachi than in northern Pakistan, terrorists are able to strike anywhere in Pakistan, including Karachi. The danger of coercion from terrorists in Pakistan government is more likely than in many other countries. Although Pakistan and the United States are allied militarily, diplomatically, and through trade, the Pakistan Government has had significant difficulty maintaining order within its borders and in the suppression of terrorists. I have continuing doubts that Applicant's parents living in Pakistan will remain safe from terrorist coercion should Applicant receive access to classified information.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not fully mitigated the foreign influence security concerns arising from his parents continued residence in Pakistan.

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<sup>3</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

## **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:	Against Applicant
Subparagraphs 1.b to 1.e:	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. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge