



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



In the matter of: )  
)  
) ISCR Case No. 10-06707  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison O’Connell, Esq., Department Counsel  
For Applicant: Christopher Graham, Esq.

September 27, 2011

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern generated by his relatives who are citizens and/or residents of Pakistan. Clearance is denied.

**Statement of the Case**

On April 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. 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) implemented by the Department of Defense on September 1, 2006. Applicant answered the SOR on August 6, 2011, admitting the allegations and requesting a hearing. The case was assigned to me on August 4, 2011. On August 10, 2011, a notice of hearing was issued scheduling the case for August 26, 2011. The hearing was held as scheduled. I received two

Government exhibits marked as Government Exhibits (GE) 1 and 2. Applicant submitted three exhibits admitted as Applicant's Exhibits (AE) A through C.<sup>1</sup>

### **Ruling of Evidence**

At Department Counsel's request, I took administrative notice of facts about Pakistan set forth in what I marked as Hearing Exhibits (HE) I through VIII. The following is a summary.

1. Pakistan is a developing country. Although it is ostensibly a federal republic, the military continues to have a pervasive influence on the government, and its human rights record remains poor. (HE I at 9 and HE VII at 1) The Pakistani government maintains several domestic intelligence services that monitor politicians, political activists, and journalists. (*Id.* at 12)

2. Pakistan's government does not entirely control its country, and the infrastructure of significant parts of the country has been devastated by natural disasters over the years. Ongoing internal tensions, ethnic and religious strife, and general lawlessness prevail in many parts of the country. (*See generally*, HE II and HE VII)

3. Pakistan is home to a number of extremist groups, including the Taliban and Al-Qaeda, that target American and other Western interests, high-level Pakistani government officials, and members of indigenous minority and religious groups (HE II at 1; HE V at 6) Although Pakistan has made significant gains against these groups over the past two years, many continue to operate in remote parts of the country with impunity. (HE V at 6)

4. Pakistan has historically supported the Taliban and considers militant groups to be important to its efforts to counter India's military and economic advantages. (HE I at 8-9)

5. In May 2011, U.S. forces killed Osama bin Laden, mastermind of the 911 attacks and numerous other terrorist attacks around the world. He had been living in hiding in an affluent suburb of Islamabad, Pakistan's capital, in a home eight times larger than any homes in the community, reinforced by extraordinary security measures including 12 to 18 foot walls topped with barbed wire and two security gates. (HE VI at 3)

### **Findings of Fact**

Applicant is a 33-year-old married man with three children, ages eight, five, and one. He was born and raised in Pakistan. After graduating from college, he immigrated to the United States in 2001 to attend graduate school. (GE 2 at 26) He briefly attended graduate school, then decided to withdraw and focus on mastering the English

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<sup>1</sup>Applicant destroyed AE A, a national identification card issued by Pakistan, on the record. I did not include its remnants in the file.

language, gaining practical work experience, and becoming generally more acclimated to U.S. culture. (Tr. 14)

For the next nine years, Applicant worked for various companies including a pharmaceutical company, an information technology company, and an insurance company. He also periodically drove a cab and took some college courses. Since June 2009, Applicant has worked for a government contractor as a database architect. His duties include maintaining and developing databases. (Tr. 18)

Applicant has been a naturalized U.S. citizen since April 2009. (GE 2 at 26; Tr. 17) His wife is also originally from Pakistan. She immigrated to the United States in 1999 when she was 15 years old and became a naturalized citizen immediately upon her parents' application. (Tr. 37) Applicant and his wife met in the United States, and traveled to Pakistan in May 2002 for their wedding ceremony. (Tr. 36)

Applicant's parents emigrated from Pakistan to the United States in September 2010 and moved in with Applicant. (Tr. 22-23) Before emigrating, Applicant's father worked as a vice president of a bank. (GE 2 at 27) Now, he is a gas station cashier. Applicant's mother never worked outside of the home. (Tr. 45) Recently, she returned to Pakistan to care for her gravely ill mother (Applicant's grandmother). She will return to the U.S. after her mother passes away. (Tr. 23) Both parents have permanent U.S. residence status and intend to become U.S. citizens. (Tr. 22, 46)

Applicant has one sister. She is a Pakistani citizen who lives with him and is attending college on a student visa. (Tr. 24) Applicant is sponsoring her to become a U.S. citizen. (Tr. 24)

Applicant has two brothers. His younger brother is a Pakistani citizen living in the United Kingdom. He is currently unemployed. Applicant is sponsoring him to become a U.S. citizen. (GE 2 at 29)

Applicant's older brother is an officer in the Pakistani army. He has been in their army since 1994. He spent the majority of his career in an anti-narcotics division that worked together with U.S., British, and Canadian forces. (Tr. 25) He has received extensive U.S.-sponsored training. (AE B at 10, 12-14) Over the years, he has received several awards from U.S. drug-interdiction agencies and joint U.S./Pakistani drug interdiction agencies. (*See generally*, AE B at 7-12) For the past few years, he has been working in a special operations unit directly under the guidance of U.S. troops. (Answer at 4)

Applicant's brother who is in the Pakistani Army has a 5-year U.S. visa. (Tr. 50) He has spent significant periods of time in the United States, typically visiting for two-month intervals, and staying with Applicant. (GE 2 at 29) Both of Applicant's brother's children were born in the United States. (AE C at 2-3) The oldest child, a 10-year-old boy, is autistic. In 2010, the child spent nearly an entire school year attending a U.S. public school. (Tr. 50) It is unclear from the record whether Applicant's brother lived with

the child during that time. Applicant's brother and sister-in-law intend to immigrate to the United States so that their child can receive quality special education. (Tr. 52) Applicant and his brother talk about once every two months. (Tr. 52)

Applicant owns his home. He is active in his community, participating in the neighborhood homeowner's association and enjoying barbecues with neighbors. (Tr. 32)

Applicant's mother-in-law is a citizen and resident to Pakistan. She is a homemaker. She has never visited the U.S. (GE 2 at 29) His wife talks to her about once every other month. Applicant has no contact with her. (Tr. 29)

Applicant's parents-in-law are divorced. His father-in-law is a naturalized U.S. citizen who has been living in the United States since the 1980s. (*Id.*)

As of the date of the SOR, Applicant possessed a Pakistani identification card. He has had this card since 2005. It enables him to travel to Pakistan with his U.S. passport without a visa. (Tr. 38) Applicant's father applied for Applicant's identification card. (Tr. 20) Applicant cannot recall ever using it for travel to Pakistan. He destroyed the identification card at the hearing. (Tr. 21)

### **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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. 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."

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 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).

## **Analysis**

### **Guideline C, Foreign Preference**

Under this guideline, “when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States” (AG ¶ 9). Here, Applicant’s possession of a Pakistani identification card creates a general foreign preference security concern under the guideline’s introductory paragraph (AG ¶ 9). However, none of the disqualifying conditions apply. Although Applicant was in possession of a Pakistani national identification card when the SOR was issued, he received it before he became a naturalized U.S. citizen. The potentially applicable disqualifying guideline, AG ¶ 10(a), is predicated on the “exercise of any right, privilege, or obligation of foreign citizenship *after* [italics added] becoming a U.S. citizen . . .”

Applicant destroyed the Pakistani identification card at the hearing. Absent any other indicators of foreign preference, I resolve this guideline in his favor.

### **Guideline B, Foreign Influence**

Under this guideline, “foreign contacts and interests may be a security concern if an 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 interests.” (AG ¶ 6) Pakistan is a haven for extremist, anti-American groups, including Al Qaeda, which masterminded the 911 attack. Consequently, Applicant’s Pakistani relatives who are Pakistani citizens generate concerns under 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 risk of foreign exploitation, inducement, manipulation, or coercion.”

Applicant is a successful person who immigrated to the United States 10 years ago, mastered the English language, and has successfully nurtured a career as a database architect. He is a homeowner who is comfortably integrated into U.S. culture.

The depths of his ties to the United States, however, cannot overcome the security concern generated by his Pakistani relatives, particularly his brother who is a major in the Pakistani army. Neither 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.,” nor AG ¶ 8(b), “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest,” apply.

Applicant is close to all of his immediate family members. Although he has little or no contact with his mother-in-law, he remains vulnerable to coercion through her relationship with his wife. 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,” does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant’s longstanding ties to the U.S. are outweighed by his relationship with his Pakistani relatives. Upon evaluating this case in the context of the whole-person concept, I conclude Applicant has not mitigated the security concerns. 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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Paragraph 2, Guideline B:

AGAINST APPLICANT

Subparagraphs 2.a-2.e:

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge