



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



In the matter of: )  
 )  
----- ) ISCR Case No. 11-06320  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

10/12/2012

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On September 22, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> On June 13, 2012, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on June 27, 2011.<sup>2</sup> On an unspecified date, DOHA issued him another set of interrogatories. He responded to the interrogatories on an unspecified date, which he subsequently signed on September 25, 2012.<sup>3</sup> DOHA issued a Statement of Reasons (SOR) to him on June 20, 2012, pursuant to Executive Order 10865,

<sup>1</sup> Government Exhibit 1 ((SF 86), dated September 22, 2010).

<sup>2</sup> Government Exhibit 2 (Applicant's Answers to Interrogatories, dated June 27, 2011).

<sup>3</sup> Government Exhibit 3 (Applicant's Answers to Interrogatories, dated September 25, 2012).

*Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline B (Foreign Influence), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on June 26, 2012. In a sworn statement, dated July 10, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On August 13, 2012, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on August 22, 2012. A Notice of Hearing was issued on September 5, 2012, and I convened the hearing, as scheduled, on September 25, 2012.

During the hearing, four Government exhibits (GE 1 through 4) and eight Applicant exhibits (AE A through H) were admitted into evidence without objection. Applicant and two other witnesses testified. The transcript (Tr.) was received on October 2, 2012.

### **Rulings on Procedure**

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Islamic Republic of Pakistan (Pakistan), appearing in nine U.S. Government publications. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Pakistan in publications of The White House,<sup>4</sup> the U.S. Department of State,<sup>5</sup> the Director of National Intelligence,<sup>6</sup> and the Chairman of the Joint Chiefs of Staff.<sup>7</sup>

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<sup>4</sup> The White House, Office of the Press Secretary, *Press Briefing by Senior Administration Officials on the Killing of Osama bin Laden*, dated May 2, 2011.

<sup>5</sup> U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2010, Terrorist Safe Havens*, dated August 18, 2011; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports: South and Central Asia Overview*, dated August 18, 2011; U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Pakistan*, dated February 2, 2012; U.S. Department of State, *Country Specific Information: Pakistan*, dated October 31, 2011; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2011 Human Rights Report: Pakistan*, dated May 24, 2012.

<sup>6</sup> Director of National Intelligence, *Unclassified Statement for the Record on the Worldwide Threat Assessment of the U.S. Intelligence Community for the House Permanent Select Committee of Intelligence*, dated February 2, 2012.

<sup>7</sup> Statement of Admiral Michael Mullen, U.S. Navy, Chairman, Joint Chiefs of Staff, before the Senate Armed Services Committee on Afghanistan and Iraq, dated September 22, 2011; Chairman of the Joint Chiefs of Staff National Public Radio "All Things Considered" Interview, dated March 27, 2009.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,<sup>8</sup> as set forth below under the Pakistan subsection.

### Findings of Fact

In his Answers to the SOR, Applicant admitted, with explanations, all of the factual allegations pertaining to foreign influence (¶¶ 1.a. through 1.e.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 40-year-old employee of a defense contractor who, since June 2009, has served as a senior computer system analyst.<sup>9</sup> He was previously employed by the same employer as a computer analyst from April 2002 until February 2005; and as a senior field engineer in Pakistan from February 2005 until June 2009. Applicant has never served in the U.S. military or in the military of any foreign country.<sup>10</sup> He has never held a security clearance.<sup>11</sup>

### Foreign Influence

Applicant's parents were born in Pakistan,<sup>12</sup> and they are both citizens and residents of a city that is a substantial distance from both the Federally Administered Tribal Areas (FATA) of Pakistan and Balochistan Province.<sup>13</sup> Applicant's father was, before his retirement, an employee of an international oil company, and his mother is a housewife.<sup>14</sup> He has five brothers and one sister. One brother was born in Pakistan, and he remains a citizen and resident of Pakistan, where he is self-employed in a family

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<sup>8</sup> Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). 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). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

<sup>9</sup> GE 1, *supra* note 1, at 18.

<sup>10</sup> GE 1, *supra* note 1, at 21.

<sup>11</sup> GE 1, *supra* note 1, at 48; Tr. at 47.

<sup>12</sup> Under the Indian Independence Act of 1947, India was partitioned into two separate countries, India and Pakistan. As Applicant's parents were both born before partition, they were actually born in India.

<sup>13</sup> GE 1, *supra* note 1, at 27-28.

<sup>14</sup> GE 2, *supra* note 2 (Personal Subject Interview, dated October 12, 2010), at 1.

export/import business.<sup>15</sup> A second brother was born in Saudi Arabia, is a citizen and resident of Pakistan, but is currently being educated in Europe.<sup>16</sup> A third brother was born in Pakistan, is a citizen and resident of Canada where he is employed by a hotel and restaurant.<sup>17</sup> A fourth brother was born in Pakistan, but is a citizen and resident of Canada where he works for a mail delivery company.<sup>18</sup> A fifth brother was born in Pakistan and is a citizen of Pakistan, but he is a permanent resident of the United States where he is self-employed in the export/import business.<sup>19</sup> Applicant's sister was born in Saudi Arabia, is a citizen and resident of Pakistan, and is currently being educated in Europe.<sup>20</sup> She is in the final stages of obtaining immigration status for Canada, and intends to relocate there as soon as her application is approved.<sup>21</sup> Applicant's parents and his siblings have never had any connection with the Pakistani Government, the military, or the intelligence service.

The frequency of Applicant's contacts with his parents and siblings is varied. He speaks with his parents by telephone once every two weeks; with his sister, twice a month; with his brothers in Canada, two to three times per week; with his brothers in Pakistan, once every two to three months; and with his brother in the United States, once per month, as well as in person. Applicant last saw his family in Pakistan in 2010 when he attended the wedding of one of his brothers.

Applicant was born in Pakistan.<sup>22</sup> He left Pakistan at the age of two when his family moved to Saudi Arabia in connection with his father's employment. He left Saudi Arabia in 1988, and attended an American boarding school in Switzerland until mid-1993.<sup>23</sup> Applicant immigrated to the United States in mid-1993 to attend a U.S. university. He eventually obtained a Bachelor of Science degree in information technology in 2005 from one university and a master's degree in information systems management in 2007 from another university.<sup>24</sup> He is currently enrolled in another graduate program.

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<sup>15</sup> GE 2, *supra* note 2 (Personal Subject Interview), at 1; GE 1, *supra* note 1, at 30.

<sup>16</sup> GE 2, *supra* note 2 (Personal Subject Interview), at 2; GE 1, *supra* note 1, at 33.

<sup>17</sup> GE 2, *supra* note 2 (Personal Subject Interview), at 2; GE 1, *supra* note 1, at 32; GE 2, *supra* note 2 (Letter, dated June 27, 2011).

<sup>18</sup> GE 2, *supra* note 2 (Personal Subject Interview), at 2; GE 1, *supra* note 1, at 30-31.

<sup>19</sup> GE 2, *supra* note 2 (Personal Subject Interview), at 3; GE 1, *supra* note 1, at 31.

<sup>20</sup> GE 2, *supra* note 2 (Personal Subject Interview), at 1; GE 1, *supra* note 1, at 33-34.

<sup>21</sup> Applicant's Response to the SOR, dated July 10, 2012, at 2.

<sup>22</sup> GE 1, *supra* note 1, at 6.

<sup>23</sup> Tr. at 43-44; AE D (Diploma, dated June 19, 1991).

<sup>24</sup> Tr. at 44-46; AE E (Degree, dated April 30, 2005); AE F (Degree, dated October 31, 2007).

Applicant was married the first time in 1997, and divorced in 2003. He married his current wife in 2003, and they have two children, born in the United States in 2004 and 2008.<sup>25</sup> Applicant's current wife was born in Kuwait, and she became a naturalized U.S. citizen.<sup>26</sup> The family resides in the United States with her parents. Applicant's father-in-law and mother-in-law were born in Pakistan. His father-in-law is a citizen and resident of the United States. His mother-in-law remains a citizen of Pakistan, and permanent resident of the United States.<sup>27</sup> His father-in-law is unemployed and his mother-in-law is a nurse. Neither of his in-laws has ever had any connection with the Pakistani Government, the military, or the intelligence service.

Applicant became a naturalized U.S. citizen in July 2009. Between July 2009 and September 2010, he maintained dual citizenship, but on September 21, 2010, he destroyed his previously issued Pakistani passport and essentially renounced his Pakistani citizenship.<sup>28</sup> He formally renounced his Pakistani citizenship earlier this year.<sup>29</sup> Applicant stated: "I am, first and foremost, an American Citizen and took an oath to uphold the laws of the United States and to protect this country." Applicant has no financial interests in Pakistan.

## **Pakistan**

Pakistan is a parliamentary federal republic in South Asia. It is a low-income country, with a population that is 97 percent Muslim. It has a coalition government. Pakistan was one of only three countries to recognize the Taliban regime of Afghanistan, after September 11, 2001. However, Pakistan reassessed its relations with the Taliban and pledged support to the United States and the international coalition in Operation Enduring Freedom, which aimed at removing the Taliban from power. Despite this support, members of the Taliban are known to be in the FATA of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The Taliban operates openly in Pakistan, as do 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. Those safe havens have been defined as.<sup>30</sup>

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<sup>25</sup> GE 1, *supra* note 1, at 24-26, 28-29.

<sup>26</sup> GE 1, *supra* note 1, at 24-25.

<sup>27</sup> GE 2, *supra* note 2 (Personal Subject Interview), at 3; GE 1, *supra* note 1, at 34-35; GE 2, *supra* note 17 (Letter).

<sup>28</sup> GE 1, *supra* note 1, at 8-10.

<sup>29</sup> Atch. to Applicant's Response to the SOR.

<sup>30</sup> U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2010, Terrorist Safe Havens*, *supra* note 5, at 1

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.

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. In January 2011, the Governor of Punjab was assassinated in a terrorist attack, and in March 2011, the Pakistani Federal Minister for Minority Affairs was assassinated in another terrorist attack.

Pakistan consistently ranks among the most corrupt countries in the world by numerous international organizations. 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.

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.

On May 1, 2011, U.S. Special Forces personnel raided a large compound located in a residential neighborhood in Pakistan and shot and killed Osama bin Laden, the leader of al-Qaida.

### **Character References and Work Performance**

Applicant's overall performance assessments have generally characterized him as a successful contributor, high contributor, or exceptional contributor – the three top ratings among the five possible ratings. He is mission-oriented rather than task-oriented, and consistently exceeds objectives and expectations. He works effectively with others.<sup>31</sup> A former supervisor, who was also a former senior U.S. intelligence officer, and is now the president of another defense contractor, has described Applicant in very favorable terms. Applicant has a "track record of technical expertise, demonstrated leadership and unimpeachable integrity."<sup>32</sup> Another colleague mentioned Applicant's "high personal integrity" as well as his trustworthiness. During Applicant's assignment to Pakistan as part of the global war on terrorism, in support of U.S. efforts in Pakistan, Applicant performed his duties with "integrity, hard work and creative thinking under sometimes difficult circumstances."<sup>33</sup>

### **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, "no one has a 'right' to a security clearance."<sup>34</sup> 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>35</sup>

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 AG list potentially disqualifying conditions and mitigating

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<sup>31</sup> AE A (Performance Assessment and Development Review, dated December 16, 2011); AE B (Performance Assessment and Development Review, dated December 13, 2008); AE C (Performance Assessment and Development Review, dated March 18, 2005).

<sup>32</sup> Character Reference, undated, attached to Applicant's Response to the SOR.

<sup>33</sup> AE H (Character Reference, dated January 22, 2007).

<sup>34</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>35</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>36</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>37</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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>38</sup>

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>39</sup> 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 or has not met the strict

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<sup>36</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

<sup>37</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>38</sup> *Egan*, 484 U.S. at 531

<sup>39</sup> See Exec. Or. 10865 § 7.



guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

## Analysis

### Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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

The 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.<sup>40</sup> Applicant's relationships with his parents and siblings who remain Pakistani citizens and residents are current security concerns for the Government. The security significance of his continuing relationships with those family members and extended family members who are citizens, but not residents of Pakistan, especially those residing in the United States and Canada, has been substantially minimized.

The guideline notes several conditions that could raise security 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 heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*" is potentially disqualifying. Similarly, under 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*" may raise security concerns. I find AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his parents and siblings who are

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<sup>40</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

Pakistani citizen-residents, to determine the degree of “heightened risk” or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where:

*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.*

Similarly, AG ¶ 8(b) may apply where the evidence shows:

*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.*

In addition, AG ¶ 8(c) may apply where “*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.*”

In assessing whether there is a heightened risk because of an applicant’s relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant’s conduct and circumstances, in light of any realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.<sup>41</sup> In fact, the Appeal Board has cautioned against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”<sup>42</sup>

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

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<sup>41</sup> See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

<sup>42</sup> ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

In October 2001, U.S. forces and coalition partners led military operations in Afghanistan, forcing the Taliban out of power. Nevertheless, many daunting challenges remained largely because terrorists including al-Qaida and the Taliban continue to assert power and intimidation within both Afghanistan and Pakistan. It is less likely that the Pakistan government would attempt coercive means to obtain sensitive information. The real concern in this instance is not the Pakistan government, but rather al-Qaida or other terrorist organizations operating within Pakistan.

There is little security concern regarding Applicant's two brothers who are citizens and residents of Canada; the brother who is a citizen of Pakistan, but a permanent resident of the United States; Applicant's sister who is currently a citizen of Pakistan, awaiting relocation to Canada; as well as his mother-in-law who is a citizen of Pakistan, but a permanent resident of the United States. Under those circumstances, as to them, there is no continuing substantial risk of any kind of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

However, as to the remaining family members – Applicant's parents and one brother are citizens and residents of Pakistan; and one brother is a citizen and resident of Pakistan, but is currently being educated in Europe – there are potential security issues. Although Applicant's parents and siblings reside in a city that is a substantial distance from both the FATA of Pakistan and Balochistan Province, there is substantial risk – a "heightened risk" – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. There is no evidence that Applicant's parents or siblings are, or ever have been, political activists, challenging the policies of the Pakistan government; that terrorists have approached or threatened Applicant or his parents or siblings any reason; that the Pakistan government, al-Qaida, or other terrorist organizations have approached Applicant; or that his parents or siblings currently engage in activities that would bring attention to himself. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Pakistan government, al-Qaida, or other terrorists, which may seek to quiet those who speak out against them.

Applicant relocated with his family from Pakistan to Saudi Arabia when he was two years old. In 1988, his exposure to American ideals commenced when he enrolled in an American boarding school in Switzerland. He has significant connections to the United States, having resided in the United States since mid-1993; completing two university degrees in the United States; being married here; having two children here; and working here. He formally renounced his Pakistani citizenship. With the exception of his few family members still residing in Pakistan, Applicant's immediate and extended family members all reside either in the United States or Canada. Moreover, he wants his security clearance so that he can return to Pakistan and assist U.S. Armed Forces and the U.S. Department of State. He has offered to continue to risk his life to support the United States' goals in Pakistan, and has shown his patriotism, loyalty, and fidelity to the United States. Applicant's continuing relationship with his parents and siblings is close and his contacts with them are frequent, too close and frequent to generate more

than a limited application of AG ¶¶ 8(a) and 8(c). However, I am persuaded that his loyalty to the United States is steadfast and undivided, and that he has “such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” AG ¶ 8(b) applies.

### **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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>43</sup>

There is some evidence against mitigating Applicant’s situation, because his parents and one brother are citizens and residents of Pakistan; and one brother is a citizen and resident of Pakistan, but is currently being educated in Europe. Although they reside in a city that is a substantial distance from both the FATA of Pakistan and Balochistan Province, there is substantial risk – a “heightened risk” – of foreign exploitation, inducement, manipulation, pressure, or coercion from the Pakistan government, al-Qaida, or other terrorist organizations. (See AG ¶ 2(a)(8).)

The mitigating evidence under the whole-person concept is more substantial. Applicant has offered to continue to risk his life to support the United States’ goals in Pakistan, and has shown his patriotism, loyalty, and fidelity to the United States. He is fully aware of the risks to himself and family members from al-Qaida and other terrorists. These circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him.<sup>44</sup> With the vast majority of his family and extended family members residing in the United States or Canada, there is a reduced “heightened risk” of foreign

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<sup>43</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>44</sup> See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

exploitation, inducement, manipulation, pressure, or coercion. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

### **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge