



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



In the matter of:	)	
	)	
(REDACTED)	)	ISCR Case No. 11-06529
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

04/16/2012

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Foreign Preference concern, but failed to mitigate the Foreign Influence concern. His family in Pakistan places him at a heightened risk of foreign exploitation from extremist elements and terrorists operating within Pakistan. Clearance is denied.

**Statement of the Case**

On November 14, 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), setting out security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Influence).<sup>1</sup> On December 14, 2011, Applicant submitted his Answer and requested a hearing.

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<sup>1</sup> DOHA took this action acted under Executive Order (EO) 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.

On January 18, 2012, Department Counsel alerted the Hearing Office that the Government was ready to proceed with a hearing. After coordinating with the parties, I scheduled the hearing for March 2, 2012.

At hearing, Department Counsel offered Government Exhibits (GE) 1 through 3, which were admitted into evidence without objection. Department Counsel also submitted eleven documents for administrative notice regarding Pakistan.<sup>2</sup> Applicant appeared at the hearing, testified, and offered Applicant's Exhibits (AE) A through H. These exhibits were admitted without objection. I granted Applicant's request to keep the record open to provide him additional time to submit matters for my consideration. He timely submitted a letter from his facility security officer (FSO). This document was marked and admitted as AE I. The transcript (Tr.) was received on March 15, 2012.

### **Findings of Fact**

Applicant is in his fifties and was born in Pakistan. He immigrated to the United States in the (redacted) to advance his education. He received his master's and doctorate degrees from a prestigious U.S. university in the (redacted). He was granted a scholarship by the Pakistani government to attend school in the United States. He returned to Pakistan to work for the Pakistani government for a period of time, which was a condition of his scholarship. He was released from this commitment after about a month. He has been employed in academia, in the United States, for over two decades. He was granted U.S. citizenship (redacted). He is married and has (redacted) children, who were born and reside in the United States. Applicant's mother and brothers also reside in the United States.<sup>3</sup>

Applicant and his wife, who is also a dual citizen of Pakistan, have a number of close family members living in Pakistan. These family members have a long history of working for the Pakistani government, including in high-level posts. These family members are staunchly opposed to extremist elements within Pakistan. Several of these family members, through their government service, have forged close ties to the United States. Although most of these family members have now retired from government service, some continue to work for the Pakistani government in positions that make them targets for extremist elements and terrorists operating in Pakistan. Applicant disclosed these family members and his close connection to them on his security clearance application (SCA). He then discussed his foreign family members during the ensuing background investigation. At hearing, Applicant passionately and credibly promised that he would not divulge U.S. information if subjected to foreign pressure.<sup>4</sup> (SOR ¶¶ 1.a – 1.f)

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<sup>2</sup> Department Counsel's summary regarding Pakistan, which is taken from Administrative Notice (AN) I – XI, was marked as Hearing Exhibit (HE) I. The facts administratively noticed are set forth in my findings of fact.

<sup>3</sup> Tr. at 20-25; GE 1; GE 2; AE A; AE C; AE D.

<sup>4</sup> Tr. at 53-71, 82; GE 1; GE 2; AE A; AE F; AE G.

After becoming a U.S. citizen, Applicant continued to possess and, on one occasion, used his Pakistani passport to travel to Pakistan. He did so only for convenience and not out of any sense of loyalty to Pakistan. He surrendered his Pakistani passport to his FSO at the outset of the security clearance process, and will use his U.S. passport on future trips to Pakistan. He fully disclosed his foreign travels on his SCA. He is willing to renounce his Pakistani citizenship. He has never voted in Pakistani elections. He owns property in Pakistan, but has no plans of moving to Pakistan. The value of the property in Pakistan pales in comparison to Applicant's substantial assets in the United States. Applicant considers the United States his home, and plans on working and raising his children in the United States.<sup>5</sup> (SOR ¶¶ 1.g and 2.a – 2.c)

Applicant's former student and current colleague, who served in the U.S. military for over 20 years and has held a clearance for over three decades, testified at the hearing. He is aware of Applicant's ties to Pakistan and is confident that Applicant would protect U.S. national security. He also noted that it was not Applicant's idea to seek a security clearance. Rather, it was the witnesses' boss who sought to bring Applicant (and his expertise) onto a classified U.S. project.<sup>6</sup> Applicant testified that the only reason he is seeking a security clearance is to give back to the country that has given him so much. He feels deeply indebted to the United States.<sup>7</sup>

Pakistan is a parliamentary federal republic that went through successful democratic elections in 2008. It is a developing nation, which is still dealing with natural disasters that devastated parts of the country in 2005 and 2010. The core of Al-Qa'ida (AQ) is based in Pakistan and its former leader Osama bin Laden was killed by U.S. forces in Pakistan in 2011. AQ, the Taliban, and other extremist forces operate from safe havens within Pakistan. The presence of these groups poses a serious danger to U.S. citizens throughout Pakistan. These groups have carried out attacks and kidnappings against U.S. citizens. They have also committed major terrorist attacks against the Pakistani government and its citizens. As for the Pakistani government, the U.S. State Department notes that elements within the government continue to commit major human rights abuses, including extrajudicial killings, disappearances, and torture. The failure to prosecute these abuses has led to a culture of impunity.<sup>8</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

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<sup>5</sup> Tr. at 21-35, 48-53, 62-70; GE 1 – GE 3; AE A; AE E; AE I.

<sup>6</sup> Tr. at 31-41. *See also* AE B.

<sup>7</sup> Tr. at 51-52.

<sup>8</sup> GE I – VIII.

disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." Directive ¶ E3.1.15.<sup>9</sup> An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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. "A clearance adjudication is an applicant's opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country."<sup>10</sup>

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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."

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<sup>9</sup> ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) ("Once an applicant's SOR admissions and/or the Government's evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.").

<sup>10</sup> ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

## Analysis

### Guideline B, Foreign Influence

The foreign influence concern is set forth at AG ¶ 6, as follows:

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.

Applicant and his wife's familial ties to Pakistan triggers the foreign influence concern. It also establishes the following disqualifying conditions 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;

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

(c) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.<sup>11</sup>

Applicant's foreign familial ties do not end the foreign influence analysis. AG ¶ 8 sets forth a number of mitigating conditions that could mitigate the concern. I have considered all the mitigating conditions under AG ¶ 8 and only the following were potentially raised by the evidence:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those

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<sup>11</sup> I considered AG ¶ 7(e), however, Applicant's property interest in Pakistan is not "substantial." Further, in comparison with his U.S. assets and connections to the United States, Applicant's relatively minor property interest in Pakistan "could not be used effectively to influence, manipulate, or pressure" him. See AG 8(f). Accordingly, SOR ¶ 1.g is decided in Applicant's favor.

persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

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

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

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts . . . from a foreign country.

Applicant disclosed his connections to his relatives in Pakistan on his SCA and then discussed them throughout the course of his security clearance investigation. Applicant's honesty, however, does not mitigate the significant concern raised by his familial ties to Pakistan.<sup>12</sup> Several of Applicant's family members have held high-level posts within the Pakistani government. One of Applicant's closest family members currently holds a position within the Pakistani government that makes them a target for extremist elements and terrorists operating within Pakistan. Although Applicant does not communicate with some of his foreign relatives on a regular basis and stated he would repel any attempt to influence him, I cannot overlook the danger posed to U.S. interest by those same groups within Pakistan that would target his family.<sup>13</sup> Applicant's deep relationship with the United States does not obviate the threat of foreign influence, especially in light of the nature of the threat posed by terrorists and extremist elements operating within Pakistan.<sup>14</sup> Accordingly, I find that AG ¶¶ 8(c) and (e) partially apply, but are insufficient to mitigate the significant concern at issue. Applicant's foreign familial connections remain a security concern. At the same time, I note that this finding is "not a comment on Applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a

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<sup>12</sup> See generally ISCR Case No. 11-02087 at 2-3 (App. Bd. Mar. 20, 2012) (honesty and "[e]ven years of safeguarding national security information may not be sufficient to mitigate" concern at issue).

<sup>13</sup> But see ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008) ("Generally, an Applicant's statements, by themselves, as to what he would do in the face of threats by a foreign government or entity are entitled to little weight").

<sup>14</sup> See generally ISCR Case No. 11-01920 at 2 (App. Bd. Dec. 8, 2011) ("Applicant's family contacts in Pakistan, that country's human rights record, the presence of terrorist activity there, and other geopolitical factors support the Judge's (adverse) decision").

loved-one, such as a family member,” and any doubt raised by an applicant’s circumstance must be resolved in favor of national security.<sup>15</sup>

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

Under AG ¶ 9, the concern involving foreign preference arises “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Applicant’s possession and single use of his Pakistani passport after being granted U.S. citizenship triggers this concern. It also establishes the following disqualifying condition under AG ¶ 10

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport . . . .

Applicant unequivocally mitigated the foreign preference concern. His possession and single use of his foreign passport did not indicate a preference for Pakistan over the United States. The evidence was completely to the contrary. The United States is Applicant’s home and he only seeks a security clearance to payback a debt he feels he owes the United States for everything this country has given him. Applicant credibly testified that he would renounce his dual citizenship and surrendered his Pakistani passport to his FSO. Applicant’s testimony and actions establish the following mitigating conditions under AG ¶ 11:

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

After weighing the disqualifying and mitigating evidence, I find that Applicant met his burden and mitigated the foreign influence concern.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s

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<sup>15</sup> ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009) (favorable decision reversed because applicant’s family member held a high-level position in foreign government). See *also* ISCR Case No. 09-06457 (App. Bd. May 16, 2011) (favorable decision reversed because family member’s position in foreign government made the family member a high-value target for terrorist).

conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>16</sup> I gave due consideration to Applicant’s substantial ties to the United States, as well as his educational and professional accomplishments. However, “[e]ven good people can pose a security risk because of facts and circumstances not under their control,”<sup>17</sup> and in this case Applicant’s deep familial ties to Pakistan pose heightened a risk of foreign exploitation that I must resolve in favor of national security.<sup>18</sup>

### Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant <sup>19</sup>
Subparagraphs 1.b – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

### Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant’s request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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<sup>16</sup> (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.

<sup>17</sup> ISCR Case No. 01-26893 at 9-10 (App. Bd. Oct. 16, 2002).

<sup>18</sup> AG ¶ 2(b).

<sup>19</sup> Applicant’s wife’s dual citizenship does not raise a foreign influence concern. Instead, it is her connection to her close family member’s in Pakistan that raises the risk of foreign exploitation.