



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



In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX <sup>1</sup>	)	ISCR Case No. 11-06825
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

05/30/2012

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant was born in Pakistan in 1958. He served more than 20 years in the Pakistani military and retired as a field-grade officer. He continues to receive a Pakistani Army pension; he owns a house in Pakistan; and he has a bank account in Pakistan. In 2003, he immigrated to the United States. In 2009, he became a U.S. citizen. Although his mother is scheduled to return to the United States from Pakistan in the near future, she continues to be at risk until she departs Pakistan. His honorable service as a linguist in Afghanistan is not sufficient to fully mitigate foreign influence concerns. Access to classified information is denied.

**Statement of the Case**

On September 1, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On February 9, 2012, 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

<sup>1</sup>Applicant's first and last names were erroneously inverted in the SOR. (Tr. 10)

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 was unable to find that it is clearly consistent with the national interest to grant, deny, continue, or revoke a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be denied, granted, continued, or revoked. (HE 2)

On March 9, 2012, Applicant responded to the SOR. (HE 3) On April 2, 2012, Department Counsel was prepared to proceed. On April 5, 2012, the case was assigned to me. On April 10, 2012, DOHA issued a hearing notice setting the hearing for May 9, 2012. (Transcript (Tr.) 11-12; HE 1) The hearing was held as scheduled. At the hearing, Department Counsel offered six exhibits, and Applicant offered two exhibits. (Tr. 8, 22, 64-65; GE 1-6; AE A-B) I admitted GE 1-6 and AE A-B. (Tr. 22, 65) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On May 17, 2012, I received the hearing transcript. The record closed on May 18, 2012. (Tr. 67-68) After the hearing, I received for five exhibits from Applicant, which were admitted without objection. (AE C-G)

### **Procedural Ruling**

Department Counsel requested that I take administrative notice of facts concerning the Pakistan. (Tr. 23-24; Administrative Notice Request, April 4, 2012) Department Counsel provided supporting documents to show verification, detail and context for these facts in the Administrative Notice request. Applicant did not object to me taking administrative notice of all of the facts in all of the documents. (Tr. 23-24) 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>2</sup>**

Applicant admitted the underlying facts alleged in SOR ¶¶ 1.b, 1.c, 1.e, and 1.g to 1.j with explanations. (HE 3) He also provided explanations for SOR ¶¶ 1.a, 1.d, and

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<sup>2</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.

1.f. (HE 3) Applicant's opening statement was admitted as substantive evidence. (Tr. 22) After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant was born in Pakistan in 1958. (Tr. 16-17, 25) He was raised in Pakistan. (Tr. 16) In 1979, he joined the Pakistani Army. (Tr. 20, 27) In 2003, he retired from the Pakistani Army as a field-grade officer, and he immigrated to the United States that same year. (Tr. 29, 50) The Pakistani government credited him with 22 years of Pakistani military service, and he is entitled to a pension from Pakistan's government of about \$1,130 per year. (Tr. 20, 30, 72; SOR ¶ 1.j; SOR response; GE 2) However, he gives his pension payments to his mother and other relatives. (Tr. 20) His pension is deposited into his Pakistani bank account. (Tr. 72) He does not have any current obligation to Pakistan's Army. (Tr. 30)

Applicant has a house in Pakistan valued at between \$40,000 and \$80,000, depending on the Pakistan economy. (Tr. 21; SOR ¶ 1.g; SOR response) He receives about \$3,800 per year in rent from the tenants in his Pakistani house, which is deposited into his Pakistani bank account. (Tr. 72; SOR ¶¶ 1.h and 1.i; SOR response) The house is rented on a five-year lease. (Tr. 74) Applicant offered to divest himself of his Pakistani Army pension and house in Pakistan. (Tr. 88-89) In August 2010, he turned in his Pakistani passport to his facility security officer and renounced his Pakistani citizenship. (Tr. 51; GE 2 at 395-400) Applicant visited Pakistan in 2006 and 2008. (Tr. 16)

Applicant's spouse is a citizen of the United Kingdom. (Tr. 29) She is a school teacher. (Tr. 59) Applicant's 22-year-old daughter lives in the United States and has attended U.S. colleges. (Tr. 53, 59) His son is attending high school in the United States. (Tr. 60)

Applicant had numerous Pakistani friends and colleagues, some of which had served with him for many years in Pakistan's Army, and some are or were officers in Pakistan's Army. (Tr. 20, 42-46; SOR ¶ 1.f; SOR response; GE 2) He has not communicated with any of his Pakistani friends or colleagues, who are living in Pakistan, for three years. (Tr. 20)

Applicant's mother was born in Pakistan, and she currently lives in Pakistan with Applicant's younger brother. (Tr. 18, 24; SOR ¶ 1.a) His younger brother is a citizen and resident of Pakistan. (Tr. 19, 27, 55; SOR ¶ 1.b; SOR response) He is a businessman, and he has not served in Pakistan's military or ever worked for the Pakistan government. (Tr. 19, 34) He said he has not communicated with his younger brother since 2006. (Tr. 57-58; GE 3) Even when Applicant visited Pakistan, he did not see his brother. (Tr. 58) He is not on good terms with his brother. (Tr. 58)

Applicant's father served in Pakistan's Army for more than 30 years, and he died four years after retiring from the Army in 1980. (Tr. 27, 31, 54; GE 3) At the time of his death, Applicant's father was an employee of Pakistan's government. (Tr. 31-32) His mother moved to the United States in 1980, and she became a U.S. citizen in the

1980s. (Tr. 25, 55; GE 3) For many years, she lived primarily in the United States. (Tr. 25, 28, 54) She sponsored Applicant to be a U.S. citizen. (Tr. 25)<sup>3</sup> In the past, she lived with Applicant's sister in the United States. (Tr. 19) She has lived in Pakistan for the past few years. (Tr. 19) In 2010, she was injured, and she is bedridden. (Tr. 18, 29) His mother has never been employed by Pakistan's government. (Tr. 19) He did not visit his mother in Pakistan because he is employed by a defense contractor. (Tr. 18) In August 2010, he communicated with his mother about once a week. (Tr. 55; GE 3) He currently communicates with his mother about once a month. (Tr. 57) He intends to return his mother to the United States in the next month. (Tr. 56)

Applicant's older brother and sister live in the United States. (Tr. 18, 25-26) His older brother and sister moved to the United States in the late 1970s. (Tr. 32) His older brother and sister are married to U.S. citizens. (Tr. 26, 33) They are U.S. citizens. (Tr. 27, 33) His sister traveled back and forth between Pakistan and the United States. (Tr. 28) In August 2010, he communicated with his older brother about once a week. (Tr. 55; GE 3)

Applicant's brother-in-law is a citizen of the United Kingdom, who lives in Pakistan. (Tr. 19; SOR ¶ 1.c) He intends to immigrate to the United States. (Tr. 19) Applicant has not had any contact with him since February 2010. (Tr. 61) Another of Applicant's brothers-in-law was a professor at a U.S. university. (Tr. 69) Later he was incarcerated for five years in a U.S. prison. (Tr. 61-62, 69-71) He expects to be released next year. (Tr. 70) One of Applicant's sisters-in-law moved to the United Kingdom in August 2011. (Tr. 19) Applicant's younger brother's wife lives in Pakistan; she is a citizen of Pakistan; and she does not work outside her home. (Tr. 62; SOR ¶ 1.d; SOR response)

Applicant's mother-in-law and father-in-law are dual citizens of the United Kingdom and Pakistan. (Tr. 20, 60-61; SOR ¶ 1.e; SOR response) His mother-in-law moved to the United Kingdom in 2011. (Tr. 20) His father-in-law lives in Pakistan; however, he is attempting to sell his land in Pakistan before he moves to the United Kingdom. (Tr. 20, 61)

The Department of State employed Applicant as a linguist from 2004 to 2007. (Tr. 16, 34-36, 39) He earned a master's degree in law with a specialty in taxes in the United States. (Tr. 39) In 2010, he volunteered to serve in Afghanistan. (Tr. 17) After serving eight months in Afghanistan, he was injured in a fall unrelated to combat or enemy activity. (Tr. 17, 40-41) While serving in Afghanistan he was subjected to rocket attacks and, on five occasions, he was with troops when they received enemy fire. (Tr. 17) He volunteered to accompany troops on hazardous missions, and he never refused to go in harm's way. (Tr. 18) He is willing to give his life for the United States. (Tr. 18)

Applicant is loyal to the United States and has greater connections to the United States than to Pakistan. (Tr. 21) He offered to join the U.S. Army; however, he was too

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<sup>3</sup>Applicant was unclear about why his mother waited 15 years to sponsor Applicant's immigration to the United States from Pakistan. (Tr. 47-48)

old to be recruited into the U.S. Army. (Tr. 89) He owns a home and has a bank account in the United States. (Tr. 64, 75) He is a registered voter in the United States. (Tr. 64; AE B) He has friends who are U.S. citizens and who live in the United States. (Tr. 63-64, 66) He has risked his life for the United States, and he requests that he be entrusted with eligibility for access to classified information. (Tr. 21) His only loyalty is to the United States. (Tr. 76)

### **Character Evidence**

A cashier, who worked for Applicant, has known Applicant and his family for seven years. (Tr. 78-80) He described Applicant as a nice, friendly, loyal, and positive person. (Tr. 79) An Air Force nurse, who served with Applicant in Afghanistan, extolled Applicant's conscientious dedication to the welfare of others, as well as his initiative and responsibility. (AE G)

Applicant's 2010 evaluation as a linguist indicated solid, positive ratings in all categories and emphasized his communication skills, contributions to mission accomplishment, and excellent work ethic. (AE A) Applicant's evaluation lauded his maturity, cooperation, and professionalism. (AE A)

A linguist colleague, who served with Applicant in Afghanistan, described Applicant as an honest, dedicated, reliable, and trustworthy person. (AE D) Applicant had an excellent reputation as a linguist in Afghanistan. (AE D) Applicant's linguist recruiter for service in Afghanistan praised Applicant for his energy, reliability, intelligence, capability, pleasant demeanor, maturity, thoughtfulness, good judgment, and trustworthiness. (AE F)

### **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 in Afghanistan. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan, the Khyber Pakhtunkhwa (Kpk), and in the Balochistan Province, which borders Iran and Afghanistan.

The Taliban, Lashkar e-Tayyiba (LT), the Haqqani Network, and al Qaida operate in Pakistan, and in some instances elements of the Pakistani government may be covertly aiding these terrorist or anti-U.S. entities. Taliban financing has been traced from Pakistan to Afghanistan, allowing the insurgency in Afghanistan to strengthen its military and technical capabilities. It is likely that in November 2008 LT was responsible for the attack in Mumbai, which caused numerous casualties. The Haqqani Network attacked the U.S. Embassy in Kabul in September 2011. 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.

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 operation personnel raided a large compound in Pakistan and killed Osama bin Laden, the leader of al Qaida. The raid raised concerns that the Pakistani government had knowingly permitted terrorists, militants, and insurgents to find safe havens in Pakistan.

## 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 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).

### **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 four 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;

(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;

(d) 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; and



(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant has a close relationship with his mother. He communicates frequently with her. She was born in Pakistan, and she lives in Pakistan. Applicant's Pakistani Army pension, his house in Pakistan, and his bank account in Pakistan are substantial property interests. Applicant was born in Pakistan; he was a citizen of Pakistan; he served more than 20 years in the Pakistani Army; and he retired as a field-grade Pakistani Army officer. His property interests in Pakistan are available for potential coercion from the Pakistan government or terrorists. Aside from Applicant's relationship with his mother, his relationships with others living in Pakistan is too attenuated to raise a security concern. Applicant's spouse's relationship with her parents is not sufficiently developed to establish the applicability of AG ¶ 7(d).

Applicant's communications with his mother 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 rebutted this presumption. Applicant's relationship with his mother living in Pakistan is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." His relationship with his mother creates a concern about Applicant's "obligation to protect sensitive information or technology" relative to his desire to help his mother who is in Pakistan. For example, if the Pakistan government or terrorists in Pakistan wanted to expose Applicant to coercion, it could exert pressure on his mother. Applicant would then be subject to indirect coercion through his relationship with his mother 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 or terrorist 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, the country is known to conduct intelligence collection operations against the United States, or terrorist activity causes widespread fear or destruction. The relationship of Pakistan with the United States and terrorist activity in Pakistan places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his mother living in Pakistan does 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 mother living in Pakistan who might be threatened or 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 in Pakistan seek or have sought classified or economic information from or through Applicant, or his mother living in Pakistan, it is not possible to rule out such a possibility in the future. Applicant's communications with his mother living in Pakistan are frequent, and he continues to feel an obligation to her and affection for her. Applicant's concern for his mother is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence and raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) 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 2006 and 2008, and he plans to go to Pakistan in 2012 to assist his mother's return to the United States. Applicant has frequent contact with his mother, who is in Pakistan. Applicant has quite limited contacts with his other relatives and friends in Pakistan, and security concerns relating to them 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 mother, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationship with his mother, who is living in Pakistan] could create a risk for foreign influence or exploitation." It is evident that Applicant feels an obligation to his mother'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, children, and several other relatives are either U.S. citizens or live in the United States or both. 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 relationship with his mother, who lives in Pakistan. There is no evidence that terrorists, criminals, the Pakistan government, or those conducting espionage have approached or threatened Applicant or his mother in Pakistan to coerce Applicant to obtain classified or sensitive information. 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 the ever present danger from terrorists and those who seek to damage U.S interests. The numerous murders of innocent civilians by terrorists in Pakistan makes it more likely that terrorists would attempt to coerce Applicant through his mother 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 mother living in Pakistan. Applicant is not required to report his contacts with his mother 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 is not applied through a weighing and comparison of the interests in the United States and the interests in a foreign country. The property interests in Pakistan are substantial and important to Applicant, or he would have divested himself of these interests before his hearing. His property interests in Pakistan, including his Pakistani military retirement pension, are not resolved as a security concern.

In sum, the primary security concern is Applicant's property interests in Pakistan and his close relationship with his mother, who lives in Pakistan. She is 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. Applicant visited Pakistan in 2006 and 2008, and he may visit Pakistan in 2012 to bring his mother back to the United States. His visits to Pakistan do not raise a security concern in this case.

### **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. Applicant has strong connections to the United States. In 2003, he immigrated to the United States. In 2009, he became a U.S. citizen. His spouse and children and other relatives live in the United States. He earned an advanced degree from a U.S. university. He served in Afghanistan, was exposed to danger under combat conditions, and was injured while serving in Afghanistan. He has volunteered to return to Afghanistan and risk death or serious injury on behalf of 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. Several character witnesses, including two who served with him in a combat zone in Afghanistan, lauded Applicant's dedication, diligence, trustworthiness, 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 mother lives in Pakistan. Terrorists have killed hundreds of Pakistani citizens in the last three years, and would not hesitate to coerce Applicant through his mother to obtain classified information. Applicant had frequent contact with his mother and is committed to her welfare. Applicant's mother is a U.S. citizen and will likely return to the United States in the next few days, and once she has left Pakistan, security concerns relating to her possible coercion will be substantially alleviated.

Applicant was born in Pakistan, and he served more than 20 years in the Pakistani military. He retired as a field-grade officer; he continues to receive a Pakistani Army pension; he owns a house in Pakistan; and he has a bank account in Pakistan. These substantial and long-standing connections to Pakistan raise an unmitigated security concern.

A Guideline B decision concerning Pakistan must take into consideration the geopolitical situation in Pakistan, as well as the dangers existing in Pakistan.<sup>4</sup> Terrorists are able to strike anywhere in Pakistan. The danger of coercion from terrorists in Pakistan 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 mother 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.

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<sup>4</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.f:	For Applicant
Subparagraphs 1.g to 1.j:	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.

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Robert J. Tuider  
Administrative Judge