



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



In the matter of: )  
)  
) ISCR Case No. 11-12904  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: Robert Lance, Personal Representative

08/13/2013

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for a security clearance to work in the defense industry. Applicant is a naturalized U.S. citizen from Pakistan, who was initially granted a security clearance in 2007. Since her 2007 background investigation, Applicant’s relationships with her two siblings, who are citizens and residents of Pakistan, have not changed. Nor have her siblings’ circumstances within the country changed. These relationships, though close, are not a source of influence, vulnerability, or exploitation for Applicant. Clearance is granted.

**Statement of the Case**

On September 19, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and financial considerations guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing convened on May 21, 2013, I admitted Government's Exhibits (GE) 1 through 3 and granted Department Counsel's written request that I take administrative notice of certain facts about Pakistan, without objection from Applicant. The request and the attached documents have been included in the record as Hearing Exhibit (HE) 1. I appended to the record as HE 2, the Applicant's "Personal Summary" from the Joint Personnel Adjudication System (JPAS). Applicant did not submit any documents, but she and her personal representative testified. DOHA received the transcript (Tr.) on June 3, 2013.

### **Procedural Issues**

#### **SOR Amendments**

Without objection from Applicant, I granted Department Counsel's motion to withdraw the financial considerations allegation from the SOR.

### **Findings of Fact**

Applicant, 45, has worked as an engineer for a federal contractor since April 2007. She initially applied for a security clearance in June 2007 and was granted a Secret clearance shortly thereafter. In July 2010, Applicant self-reported a December 2009 home foreclosure to her facility security officer (FSO) who filed an incident report in JPAS, presumably initiating the present investigation. In addition to the potential security concerns raised by the foreclosure, DOD identified security issues related to Applicant's relationship with her brother and sister, both of whom are citizens and residents of Pakistan.<sup>2</sup>

Pakistan is a parliamentary federal republic in Southwest Asia. After September 11, 2001, Pakistan was one of only three countries to recognize the Taliban regime of Afghanistan. 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 and Al-Qaida are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. 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. The Department of State warns U.S. citizens of the risks of travel to Pakistan in light of threats of terrorist activity. Since 2007, American citizens have been kidnapped for ransom or other reasons. Credible reports indicated

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case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> Tr. 63, 70; GE 1; HE 2.

that authorities routinely intercepted and opened mail without requisite court approval, and monitored mobile phones and electronic messages.<sup>3</sup>

Applicant immigrated to the United States in 1997 with her former husband and became a naturalized U.S. citizen in July 2003. After her divorce in 2001, Applicant's parents moved from Pakistan to the United States to provide emotional support to Applicant and her son during the divorce process. They became naturalized U.S. citizens in 2012. Applicant's brother and sister remain in Pakistan. Applicant discussed her relationships with her siblings during an interview in July 2007 and again in March 2011. Applicant's brother continues to work as an engineer; her sister as a teacher in a primary school. Applicant maintains regular telephonic or Skype contact with her sister and her brother's two daughters, both of whom are in medical school. Applicant and her sister send gifts to each other's families on special occasions. Applicant has not traveled to Pakistan since 2000 and has no plans to do so in the future. Her sister traveled to the United States with her family in 2011 to visit Applicant and their parents.<sup>4</sup>

Since being granted access to classified information in 2007, Applicant's life has undergone significant changes. Divorced at the time of her 2007 investigation, Applicant married her second husband, a U.S. citizen, in December 2009. Applicant's husband works for the same federal contractor and holds a security clearance. The couple has a one-year-old daughter. Together, Applicant and her husband have a net worth of approximately \$700,000 comprised of real estate holdings and savings accounts. They own the home they share with Applicant's parents and Applicant's 12-year-old son from her first marriage. She holds no financial interests in Pakistan.<sup>5</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 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.

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<sup>3</sup> HE 1.

<sup>4</sup> Tr. 58-60, 54-55, 68; GE 2-3.

<sup>5</sup> Tr. 33-34, 72; GE 1.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

At the hearing, Applicant expressed confusion about the government’s action to revoke her security clearance based on foreign contacts previously disclosed during her 2007 investigation, effectively raising an issue of equitable estoppel. There is no right to a security clearance.<sup>6</sup> A prior grant of a security clearance does not preclude the federal government from considering, as it has done here, whether to continue that grant or to revoke it at a future date.<sup>7</sup> However, it worth noting that the foreign influence concerns raised in the present adjudication are based on the same information favorably adjudicated in 2007. There has been no appreciable change in Applicant’s relationships with her brother and sister. Nor have her siblings’ circumstances as citizens and residents of Pakistan changed since Applicant’s 2007 investigation.

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<sup>6</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>7</sup> See, e.g., ISCR Case No. 99-0-0511 (App. Bd. Dec. 19, 2000) at 8; ISCR Case No. 99-0481 (App. Bd. Nov. 29, 000) at 5.

## Foreign Influence

Foreign influence concerns arise if an “applicant’s foreign contacts create divided loyalties or if an applicant 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.”<sup>8</sup>

Mere possession of close ties with foreign family members is not disqualifying as a matter of law. However, close relationships with persons who are residents and citizens of a foreign country can be disqualifying if the contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion; or if the relationship could create a potential conflict of interest between the applicant’s obligation to protect sensitive information or technology and her desire to help a foreign person.<sup>9</sup> In evaluating whether a heightened risk exists, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant. Perilous conditions in Pakistan caused by the operation of the Taliban and Al-Qaida create that heightened risk.

However, Applicant has presented sufficient evidence to mitigate the security concerns raised by her relationships with her foreign relatives. There is no evidence that Applicant’s family members are associated with or dependent upon the Pakistan government. Although Applicant maintains close relationships with her siblings, particularly her sister, there is no evidence to suggest that any of Applicant’s family members are in positions that raise a conflict of interest or serve as a source of exploitation or vulnerability for her.<sup>10</sup> Since her last background investigation six years ago, Applicant has increased her ties to the United States. Applicant’s parents have become naturalized U.S. citizens. She has married a U.S. citizen and had another U.S.-born child. Her U.S. - based assets have also increased substantially. Applicant has no financial interests in Pakistan, and she has not been returned to the country since 2000. Applicant’s life is firmly rooted in the United States, not Pakistan. Viewed in totality, these factors lead me to the conclusion that Applicant can be expected to resolve any conflict of interest in favor of the United States.<sup>11</sup>

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant does not have divided loyalties between the United States and Pakistan. Based on the evidence, I conclude that Applicant has mitigated the foreign influence concerns.

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<sup>8</sup> AG ¶ 6.

<sup>9</sup> AG ¶¶ 7(a), (b), (d).

<sup>10</sup> AG ¶ 8(a).

<sup>11</sup> AG ¶ 8(b).

### **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, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a -1.b:	For Applicant
Paragraph 2, Financial Considerations	WITHDRAWN

### **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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Nichole L. Noel  
Administrative Judge