



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-00896
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2013

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant’s son and sisters are citizens and residents of Pakistan. He has yet to surrender his Pakistan passport. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on August 1, 2012, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On August 31, 2012, Applicant answered the SOR and did not request a hearing. On October 2, 2012, Department Counsel, acting pursuant to Paragraph E3.1.7 of the Additional Guidance at Enclosure 3 of the Directive, requested

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

a hearing. (Hearing Exhibits XI, XII, Tr. 16) On November 15, 2012, I was assigned the case. On November 20, 2012, DOHA issued a Notice of Hearing for a hearing convened on December 3, 2012.<sup>2</sup> I admitted Government's Exhibits (Ex) 1 through 5 and Applicant's Exhibits A through E, without objection. On December 11, 2012, DOHA received the hearing transcript (Tr.).

### **Procedural Matters**

Department Counsel requested administrative notice of facts concerning the Islamic Republic of Pakistan (Pakistan) and provided supporting documents to show detail and context for those facts. Applicant agreed to the administrative notice request and the documents were admitted as Hearing Exhibits (HE) I through X.

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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). 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). I marked the documents as Ex. Exhibits I to X. See the Pakistan section of the Findings of Fact of this decision, *infra*, for the facts accepted by administrative notice.

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.a because his father, who had been a manager in a machine tool factory, died in May 2012. (Ex. A, Tr. 29, 44) He denied the factual allegations in SOR ¶ 1.c because his brother died in November 2004. (Tr. 46) He denied he held a Pakistani passport that expired September 2012, (SOR ¶ 2.a) because he had renewed the passport and its new expiration date was February 2017. He admitted the remaining factual allegations, with explanations. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 62-year-old linguist. (Ex. 2) At the time of the hearing, Applicant was no longer employed by the company who requested a security clearance for Applicant. (HE XIII) He was told by a defense contractor that they would hire him if he obtained his security clearance. (Tr. 15) He is currently a taxi cab driver. (Tr. 32) He called no witnesses other than himself and produced no work or character references.

In 1949, Applicant was born in Pakistan. From June 1968 through July 1969, he attended a commerce college in Pakistan, receiving his bachelor's degree in July 1969. (Ex. 1) He started working for a bank and became a bank manager and operations

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<sup>2</sup> Applicant waived his right to 15-day- notice prior to the hearing. (Tr. 17) The hearing was convened 13 days after the notice.

officer. (Tr. 28) For the next 20 years he worked for three banks. (Tr. 28) From October 1976 through February 1980, he worked for a bank in the United Arab Emirates (UAE). (Ex. 2) From February 1980 through July 1997, he lived in Pakistan.

In February 1980, Applicant visited relatives in the United States. In January 1995, he was interviewed for his U.S. visitor visa, and in 1997, he came to the United States after obtaining the visa. (Ex. 2, Tr. 44). While living in the United States, his visitor's visa expired in 2000, and he obtained a skilled worker visa (H-1B) in 2002. (Ex. 2) In 2005, he received his permanent U.S. residency. In August 2010, 13 years after his arrival in the United States, he became a naturalized U.S. citizen and obtained a U.S. passport. (Ex. 1, 4, E, Tr. 44)

For eight years after arriving in the United States, Applicant did not travel to Pakistan. (Tr. 23) In October 2010, Applicant traveled to Pakistan entering on his Pakistani passport and leaving on his U.S. passport. From November 2006 through February 2007, he lived in Pakistan with his brother. (Ex. 2) His Pakistani passport expires in February 2017. (Tr. 39) He has expressed a willingness to surrender his Pakistani passport if that was a requirement for the job, but has yet to surrender it. (Tr. 40) He started to renounce his Pakistani citizenship, but was asked by the consulate to provide a letter he had been hired by a DoD contractor before they would process his request. (Tr. 57) Once resignation is requested, it would take about four months for the renunciation process to be completed. (Tr. 57) At the hearing, Department Counsel informed Applicant that he would argue that having the Pakistani passport disqualifies Applicant from getting a clearance, which he argued. (Tr. 59)

Applicant's wife was born in Pakistan. In 1998, she obtained a U.S. work visa. In 2003, she obtained her green card and in 2010 she became a naturalized U.S. citizen. She has worked as a school teacher for the past seven years. (Tr. 33) Applicant's mother-in-law and father-in-law are deceased. (Tr. 38) His wife owned real property, a home, in Pakistan with a fair market value of \$120,000 (\$U.S.). (Ex. 2) In October 2012, the house was sold.

Applicant's three children were born in Pakistan in June 1976, July 1978, and May 1986. His oldest son, now age 35, is a citizen and resident of Pakistan and works as a technician in an automobile shop. (Tr. 35, 47) His two youngest sons are U.S. citizens living in the United States. His youngest son came to the United States when he was in the seventh grade. (Tr. 23) One works for a computer company and the other works for a pharmacy company after having obtained his master's degree from a U.S. university. (Tr. 36) His granddaughter was born and lives in the United States. (Tr. 62)

Applicant has three siblings, two sisters are citizens and residents of Pakistan, and his brother lives in Canada. (Tr. 35) His brother who is a banker and his sisters are housewives. (Tr. 35, 36, 46) One brother-in-law does market surveys for a company in Pakistan and the other sells insurance in Pakistan. (Tr. 45) In March 2012, Applicant filed I-130, Petitions for Alien Relative,<sup>3</sup> for both his sisters. (Ex. C, D) Six years earlier,

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<sup>3</sup> The purpose of Form I-130, Petition for Alien Relative, is for a citizen or lawful permanent resident of the United States to establish the relationship to certain alien relatives who wish to immigrate to the United

in May 2006, he also filed Form I-130 for his son. (Ex. B) The process to bring them to the United States will take ten years or more. (Tr. 37) He talks to his sisters by telephone once a month and to his son once or twice a month. (Tr. 42)

At one time, Applicant owned a small apartment in Pakistan worth about \$21,000. (Tr. 47) He sold the apartment to his father when he came to the United States. His son lives there and Applicant was paying rent to his father. (Tr. 34) The apartment will go to his father's heirs. It is likely to be divided between Applicant, his two sisters, and his deceased brother's family. The value of his share would be slightly over \$5,000. (Tr. 48)

When traveling to Pakistan, Applicant does not disclose to anyone where he is going and does not carry a cell phone due to the risk of being robbed. (Tr. 42) Having worked in the banking industry, Applicant has a background in security, privacy, trust, and other restraints that come with such a job. (Tr. 61) His immediate family, i.e. wife, two sons, and granddaughter live in the United States. (Tr. 63) He has chosen to make his life here. (Tr. 63) Applicant has limited assets in the United States. He and his wife live in their son's home, and the car is in his wife's name. The money from the sale of his wife's home in Pakistan will be used to pay down the mortgage on the home where they live.

## **Pakistan**

The Islamic Republic of 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. Despite this support, members of the Taliban are known to be in the Federally Administered Tribal Areas (FATA) of Pakistan and in the Balochistan Province, which borders Iran and Afghanistan. The leader of the Taliban operates openly in Pakistan, as are 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.<sup>4</sup> Senior Taliban leaders continue to enjoy safe haven in Pakistan. 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

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States. U.S. Citizenship and Immigration Services will process the Form I-130 as a visa number becomes available. Filing and approval of an I-130 is only the first step in helping a relative immigrate to the United States. Eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident.

<sup>4</sup> U.S. Department of State, *Country Reports on Terrorism 2011, Chapter 5- Terrorist Safe Havens – Strategies, Tactics, and Tools for Disrupting or Eliminating Safe Havens*, dated July 31, 2012. (HE I)

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 State Department warns U.S. citizens to defer traveling to Pakistan, as the presence of al-Qaida, Taliban elements, and indigenous militant sectarian groups poses a danger to American citizens.<sup>5</sup> 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. Major human rights problems in Pakistan include: extrajudicial killings, torture, disappearances committed by security forces, as well as by militant, terrorist, and extremist groups, affecting thousands of civilians in all areas of the country.<sup>6</sup> 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. Additional problems include: poor prison conditions, arbitrary arrest, widespread government corruption, rape, honor crimes, and widespread trafficking in person.<sup>7</sup> 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.

In 2005, Karachi had a population of more than 11.5 million people. It is hundreds of miles from the safe havens and contested areas on the border with Afghanistan. In the period of 1997 to 2007, there were several bombings and other terrorist incidents in Karachi. Terrorists have demonstrated their willingness and capability to attack targets where Americans are known to congregate or visit.<sup>8</sup>

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

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<sup>5</sup> U.S. Department of State, Bureau of Consular Affairs, *Travel Warning*, dated September 19, 2012. (HE IV)

<sup>6</sup> U.S. Department of State, *2011 Human Rights Reports: Pakistan*, dated May 24, 2012. (HE X)

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

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.

## **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 must be considered 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, 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. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the interests of 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 contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion 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 Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty

of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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 two 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; and

(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.

Applicant’s son and two sisters are citizens and residents of Pakistan. His deceased father, deceased brother, and brother living in Canada are not of security concern. (SOR ¶¶ 1.a, 1.c, and 1.d). The fact that his father owned an apartment in Pakistan from which Applicant may inherit \$5,000 and that his wife once owned a home in Pakistan, which has now been sold, are also not of security concern. (SOR ¶¶ 1.f and 1.g.)

Applicant talks with his sisters once a month and with his son once or twice a month. He continues to possess a valid Pakistani passport. 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 frequent, non-casual 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. See 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 coercion. 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, or the country is known to conduct intelligence operations against the United States. Pakistan and the United States have been allies. It is very unlikely that Pakistan would put Applicant into a position where he would be forced to choose between loyalty to the United States and his family members living in Pakistan. However, there are many others in Pakistan who would coercively target any Pakistani citizen or former citizen living in the United States in an attempt to gather valuable information from the United States.

As indicated previously, the Government's burden of "substantial evidence" is low. The Government produced substantial evidence of Applicant's contacts with his family living in Pakistan, his relationship with them, and his travel to Pakistan in 2006 and 2010 raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

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), and 8(c) do not apply to Applicant's relationship with his family members living in Pakistan because he has a sufficiently close emotional bond with them. His contact with them is regular or frequent.

There is no evidence that his family members living in Pakistan have been political activists, challenging the policies of the Pakistani Government. There is no evidence that terrorists or the Pakistani Government have approached or threatened Applicant or his family in Pakistan because of his work in the United States. There is no evidence that his family living in Pakistan currently engages in activities which would bring significant attention to them or that they or other Pakistani elements are even aware that Applicant works for a government contractor or might have access in the future to classified information. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation.<sup>9</sup>

Applicant has a deep relationship with wife, two sons, and granddaughter who live in the United States and he has strong connections to the United States. These actions tend to mitigate foreign influence security concerns. He has no property or investments in Pakistan other than possibly inheriting a small amount from his father's estate. But he has limited investments in the United States. He has lived in the United States for 15 years. However, because of his son's and sister's presence in Pakistan, even with Applicant longstanding relationships and loyalties in the U.S., and his background in the banking industry, I find he has failed to mitigate the foreign influence concerns.

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<sup>9</sup> Contacts with relatives living in a foreign country are presumed to be "not casual." See ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in a foreign country (*Id.*); "family members' low-key and noncontroversial lifestyle, and the fact that the [foreign] government has not contacted them about Applicant" (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in a foreign country may be sufficient to negate FIMC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country's friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the United States (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)), an applicant's "refusal to travel to [the foreign country]" and "meticulous work habits and practice of strictly following the rules relating to his work" (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)). These factors may have law probative valued under Guideline B; however, I conclude that many of these attributes are pertinent to the analysis in this case under the whole person concept. Moreover, there is persuasive case law urging broad consideration of numerous factors in the whole person concept, which overrides these restrictive decisions.

## Foreign Preference

Under AG ¶ 9 the security 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, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10(a)(1) describes one condition that could raise a security concern and may be disqualifying in Applicant’s case, “(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 renewed his Pakistani passport after becoming a U.S. citizen. He continues to possess a Pakistani passport that will be valid until 2017, establishing AG ¶ 10(a).

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

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

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

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

(f) the vote in a foreign election was encouraged by the United States Government.

None of the mitigating conditions apply. He did not invalidate or relinquish his Pakistani passport. He discussed renouncing his Pakistani citizenship, surrendering his Pakistani passport, or having the company’s security officer hold the passport, but there is no documentation that any of these events occurred. Such action may have provided mitigation under AG ¶¶ 11(b) and 11(e), however, he did not take action to effectuate these provisions. I find against him as to SOR ¶ 2.a.

In 2010, Applicant entered Pakistan on his Pakistani passport and left on his U.S. passport. This action, without more, is minor enough not to raise the action to that of a security concern. I find for him as to SOR ¶ 2.b.

## Whole-Person Concept

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the whole-person concept. It recognizes that we should view a person by the totality of his or his acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole-person concept, the Administrative Judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1:

- (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 voluntariness of participation;
- (6) the presence or absence of rehabilitation and other pertinent 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 Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Applicant has connections to the United States. In 1997, he immigrated to the United States. In 2010, he became a U.S. citizen. His spouse and two children are U.S. citizens and live in the United States.

There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. 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 sisters and son live in Pakistan. Terrorists have killed hundreds of Pakistani citizens in the last two years, and would not hesitate to coerce Applicant through his son or sisters to obtain classified information. Applicant had frequent contact with them. Important steps have been taken towards moving his son and sisters from Pakistan to the United States but the move is years away. Once they have left Pakistan security concerns will be substantially alleviated.

A Guideline B decision concerning Pakistan must take into consideration the geopolitical situation in Pakistan as well as the dangers existing in Pakistan.<sup>10</sup> Although there is less danger of terrorist attack where his sisters and son live than in northern Pakistan, terrorists are able to strike anywhere in Pakistan. The danger of coercion from terrorists in Pakistan government 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 son and sisters 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 arising from his son's and sisters' continued residence in Pakistan and the foreign preference concerns arising from his continued possession of a current Pakistan passport. For the reasons stated, I conclude he is not eligible for access to classified information.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a, c, d, f, and g:	For Applicant
Subparagraphs 1.b and e:	Against Applicant
Paragraph 2, Foreign Preference:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is denied.

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CLAUDE R. HEINY II  
Administrative Judge

<sup>10</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).