



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-02108
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

05/08/2013

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but failed to mitigate the foreign influence security concerns. Clearance is denied.

**Statement of the Case**

On September 20, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines B, foreign influence, and F, Financial Considerations. The action was taken under Executive Order 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).

Applicant answered the SOR on November 5, 2012, admitting all of the allegations except subparagraphs 1.e and 2.a, and requesting a hearing. On January 4, 2013, I received the case assignment. DOD issued a notice of videoteleconference (VTC) hearing on March 1, 2013, scheduling it for March 21, 2013. I convened the hearing that day, as scheduled, but was unable to complete it after experiencing technical difficulties with the VTC equipment. Consequently, I continued the case,

rescheduling it for April 9, 2013. During the rescheduled hearing, I received four Government exhibits, marked as Government Exhibits (GE) 1 through 4, nine Applicant exhibits, marked as Applicant Exhibits (AE) A through I, and Applicant's testimony. Also, I took administrative notice at Department Counsel's request, of the adjudicative facts set forth in ten documents, marked as Hearing Exhibit (HE) I through X. At the end of the hearing, I left the record open, at Applicant's request, to allow him to submit additional exhibits. Within the time allotted, he submitted 13 additional exhibits, received as AE J through V. DOHA received the hearing transcript (Tr.) on April 24, 2013.

### **Findings of Fact**

Applicant is a 50-year-old married man with six children. His wife is a homemaker. His children consist of two sets of twins, ages 21 and 12, respectively, and two children ages 17 and 12. Applicant is a high school graduate. He was born in Pakistan and immigrated to Saudi Arabia in 1988 where he lived for three years before immigrating to the United States. He has lived here since then, and became a naturalized citizen in June 2000. (Tr. 14-15; GE 3 at 21)

From 1991 to 2011, Applicant worked as a convenience store clerk. He then took a job serving the U.S. Army as a contract translator. (AE 1) Since then, he has spent most of his time overseas working in support of Operation Enduring Freedom. He speaks Pashto, Urdu, and some Arabic. (AE D)

Applicant is highly respected on the job. According to a U.S. Army captain, Applicant is "a faithful and trustworthy interpreter" who is "technically sound in communication and can be trusted with translating information crucial to mission success." (AE B) According to a major in one of the coalition forces from another country, Applicant "helped coordinate innumerable humanitarian assistance mission[s] and Afghanistan reconstruction projects." (AE D) Although Applicant has never come under fire while translating, he sometimes works in the field and is required to wear a helmet and a flak jacket at all times. (Tr. 45)

Applicant's wife is a Pakistani citizen with permanent U.S. resident status. They married in 1991 in Pakistan. She remained in Pakistan after Applicant immigrated to the United States. She immigrated to the United States in 2005, returned to Pakistan to care for elderly relatives, then returned to the United States in 2007. She has lived here since then. All of their children except the two youngest were born in Pakistan. They lived there with Applicant's wife. Currently, all of them are in the United States. The oldest two children attend community college. One of the twins is married to her cousin, as referenced in SOR subparagraph 1.e. He is a Pakistani citizen and lives with her in the United States.

Applicant has four brothers. One brother (B1) lives in the United Arab Emirates (UAE), and three live in Pakistan. Applicant's brother living in the UAE is a chauffeur. Applicant last visited him in 2013. (Tr. 21) B2 owns a clothing store in Pakistan. Applicant last spoke with him approximately nine months ago, and last saw him in 2007. (Tr. 22-23) B3 is an accountant employed with the Pakistani government. He is not married.<sup>1</sup>

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<sup>1</sup> The marital status of Applicant's other brothers is unknown from the record.

Applicant last talked to him in 2009 and last visited him in 2007. (Tr. 42) B4 is a storekeeper. (Tr. 26) Applicant last talked to him nine months ago, and last visited him in 2007. (Tr. 25)

Applicant has three sisters. They are all homemakers, and they all live in Pakistan. S1 and her husband are the parents of Applicant's son-in-law. S1's husband is a wholesale grocer. (Tr. 34) Applicant talks with S1 approximately once per month. (GE 4 at 3) S2's husband operates a pharmacy. Applicant speaks to her by phone approximately four times per year. (GE 4 at 3) S3 is a widow. Applicant speaks with her approximately once per month. (GE 4 at 3)

Applicant's parents-in-law are citizens and residents of Pakistan. His father-in-law owns a warehouse and sells rice and coconut oil wholesale. (Tr. 34) Applicant communicates with his parents-in-law approximately once per month. (GE 4 at 3) His wife last travelled to Pakistan in 2011. (Tr. 19)

Applicant last travelled to Pakistan in 2007 to visit his wife and children. (Tr. 39) He stayed for three months, leaving in March 2007. It is unclear from the record whether his family left Pakistan with him. Previously, Applicant visited Pakistan twice in 2005. (GE 1 at 32)

In 2007, Applicant gave his family members living in Pakistan a total of \$20,000. (Tr. 41) Between 2006 and 2007, Applicant's annual salary ranged between \$32,000 and \$45,000. (AE S, T) Applicant contends that he was able to save the money, even though his salary was modest, because his living expenses were low, as he split the rent with four roommates. (Tr. 41) Specifically, he earned approximately \$3,000 per month, but contends that his living expenses were only five hundred per month. (Tr. 50) Applicant gave his relatives money in multiple increments throughout the year. Primarily, Applicant gave money to B2 to help him with business debts, and to his parents (now deceased) for medical expenses. (Tr. 61-62) Applicant has been providing financial support to his family members since he immigrated to the United States. (Tr. 30)

In 2011, Applicant gave a \$1,000 wedding gift to one of his brothers-in-law living in Pakistan. (Tr. 31) By then he was working at his current job and earning approximately \$196,000 per year. (Tr. 43) Currently, he earns \$117,000 per year, and has approximately \$147,000 in a U.S. savings account. He has no bank accounts in Pakistan. It is unclear from the record whether he has any other property interests in Pakistan.<sup>2</sup>

### **Administrative Notice**

Pakistan is a parliamentary federal republic. (HE IX at 1) Although it is ostensibly a U.S. ally in the fight against terrorism, several terrorist groups, including Al-Qa'ida, continue to operate in parts of Pakistan with impunity, and Taliban insurgents in the U.S.-led war in Afghanistan use Pakistan's northwest frontier province to organize, train, and regroup. (HE IX at 6) Generally, Pakistan has aggressively confronted terrorists it

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<sup>2</sup> Applicant testified about the issue of Pakistani property, but I did not understand his testimony. (Tr. 43)

considers inimical to its interests, but has been lackadaisical in confronting terrorists whose operations are focused upon Afghanistan or India. (HE V at 13)

The U.S. Department of State defines terrorist safe havens as follows:

ungoverned, under-governed, or ill-governed physical areas where terrorist groups that constitute a threat to U.S. national security interests are able to organize, plan, raise funds, communicate, recruit, train, transit and operate in relative security because of inadequate governance capacity, political will, or both.<sup>3</sup>

The U.S. Department of State has concluded that Pakistan is a terrorist safe haven. (HE I at 4) The Haqqani Network, an extremist organization operating as a strategic arm of Pakistan's Inter-Services Intelligence Agency, actively conducts terrorist operations against U.S. troops in Afghanistan and against Afghan civilians. In May 2011, U.S. forces killed Osama bin Laden, mastermind of the 911 attacks and numerous other terrorist attacks around the world. He had been living in hiding in an affluent suburb of Islamabad, Pakistan's capital, in a home eight times larger than any homes in the community, reinforced by extraordinary security measures including 12 to 18 foot walls topped with barbed wire and two security gates. (HE VIII at 2)

Pakistan is a developing country. The military continues to have a pervasive influence on the government, and Pakistan's human rights record remains poor. The Pakistani government maintains several domestic intelligence services that monitor politicians, political activists, and journalists. (HE X at 1, 13, 14)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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 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."

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

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<sup>3</sup>HE I at 1.

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 for obtaining a favorable security decision.

## **Analysis**

### **Guideline B, Foreign Influence**

Under this guideline, “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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest” (AG ¶ 6). Moreover, “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” (*Id.*).

The SOR did not allege any security concern related to the United Arab Emirates. Consequently, Applicant’s relationship to B1, a resident of the United Arab Emirates, does not generate a security concern.

Applicant’s relationship with his wife, a citizen of Pakistan, triggers the issue of whether AG ¶ 7(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,” applies. Although Pakistan’s relationship with the United States has at times been frayed over the years, and terrorists operate in some parts of the country with impunity, it remains a U.S. ally. Moreover, there is no evidence that Pakistan is attempting to project its power worldwide through the exploitation of its non-resident citizens such as Applicant’s wife or his son-in-law. Consequently, I conclude that AG ¶ 7(d) does not apply to Applicant’s relationship with his wife and I resolve SOR subparagraph 1.a and 1.e in Applicant’s favor.

Pakistan’s status as a terrorist safe haven, together with the existence of elements within Pakistan’s intelligence services that are actively aiding groups conducting military operations against U.S. troops generates the application of 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 risk of foreign exploitation, inducement, manipulation, or coercion,” vis a vis Applicant’s remaining relatives who live in Pakistan.

The following mitigating conditions under AG ¶ 8 are potentially applicable:

(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 chose between the interests of the foreign individual, group, organization, or government and 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; and

(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.

With the exception of one sister and Applicant's parents-in-law, whom he talks to once per month, Applicant's contact with his relatives in Pakistan is infrequent. However, the infrequency of Applicant's contact is not sufficient to trigger AG ¶ 8(c). Applicant, by giving his brother 80 percent of his income in 2007, demonstrated that he is so dedicated to his family, that he is willing to live a frugal lifestyle to help family members in need. Under these circumstances, his contacts, though infrequent, cannot be characterized as casual. Moreover, the depth of his commitment to his relatives in Pakistan also renders AG ¶ 8(a) inapplicable.

Applicant has been living in the United States for more than 20 years. However, his immediate family just immigrated to the United States six years ago. Moreover, he did not testify about any longstanding relationships with anyone in the United States. Consequently, despite the length of time Applicant has lived in the United States, I cannot conclude that his relationships and loyalties here outweigh his ties in Pakistan such that he could "be expected to resolve any conflict of interest in favor of the U.S. interest." (AG ¶ 8(c)) Applicant has failed to mitigate the foreign influence security concerns.

### **Financial Considerations**

Under this guideline, "failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information" (AG ¶ 18). Despite supporting a wife and six children on an income less than \$45,000, Applicant, in 2007, managed to send \$20,000 to extended family members in Pakistan. AG ¶ 19(h), "unexplained affluence, as shown by . . . money transfers that cannot be explained by subject's known legal sources of income," applies.

Applicant testified that he was able to save enough money to send to relatives in Pakistan by living a frugal lifestyle, reducing his living expenses by sharing an apartment with four roommates. Although none of the mitigating conditions are relevant to Applicant's case, I am satisfied with his explanation. Applicant has mitigated the financial considerations security concern.

### **Whole-Person Concept**

Under the whole-person concept, 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.

Applicant is dedicated to his extended family in Pakistan as he demonstrated in 2007 when he gave approximately 80 percent of his income to his brother to help him pay business debts. Although such dedication is an admirable trait, it generates a vulnerability to coercion when the relatives live in a country like Pakistan, a country with an uneven human rights record, a problem with terrorism, and a problematic relationship with the United States. I conclude Applicant has not mitigated the security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b - 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge