



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



In the matter of: )  
)  
) ISCR Case No. 15-05391  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole Smith, Esq., Department Counsel  
For Applicant: Jeffrey Billett, Esq.

07/20/2017  
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**Decision**  
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MURPHY, Braden M., Administrative Judge:

Applicant mitigated the security concerns about her family connections to Pakistan under Guideline B, foreign influence. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

On March 18, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under foreign influence. The action was taken under Executive Order (Exec. Or.) 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 effective within the DoD for SORs issued after September 1, 2006.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). These AGs

apply to all adjudicative decisions issued on or after June 8, 2017. Any changes resulting from the issuance of new AGs did not affect my decision in this case. I provided the parties a copy of the new AGs by e-mail on May 12, 2017.<sup>1</sup>

Applicant answered the SOR on April 20, 2016, and requested a hearing. The case was assigned to me on April 10, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 9, 2017, scheduling the hearing for June 22, 2017, with the agreement of both parties. The hearing was convened as scheduled. Government Exhibits (GE) 1-2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. The record was held open until June 30, 2017, to enable Applicant to submit additional information. Applicant submitted four documents, which are marked collectively as AE K and admitted without objection. DOHA received the hearing transcript (Tr.) on July 7, 2017.

### **Request for Administrative Notice**

Both parties submitted written requests that I take administrative notice of certain facts about Pakistan.<sup>2</sup> Without objection, I have taken administrative notice of certain facts contained in the requests that are supported by source documents from official U.S. Government publications. The facts are summarized in the Findings of Fact, below.

### **Procedural Issue**

During preliminary matters at the start of the hearing, Department Counsel withdrew SOR ¶¶ 1.d through 1.h, without objection. (Tr. 11-12)

### **Findings of Fact**

Applicant admitted the remaining SOR allegations, ¶¶ 1.a, 1.b, and 1.c. Her admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. She was born in Pakistan in 1987. (Tr. 82; GE 1) She immigrated to the United States in 2006, when she was 19. (Tr. 25, 83) But for one summer when she returned to Pakistan to live with her parents while studying for graduate school entrance exams, she has lived in the United States ever since. (Tr. 27; GE 1) Applicant became a United States citizen in 2012. (Tr. 36-37; AE D) She attempted to formally renounce her Pakistani citizenship through the website of the Pakistani embassy, but found the process complicated. She also did not wish to provide information that might draw attention to her family members in Pakistan. (Tr. 47). She

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<sup>1</sup> Hearing Exhibit (HE) I; Tr. 7.

<sup>2</sup> HE II, HE III.

previously held a Pakistani passport but had it destroyed in 2014 during her clearance application process. (Tr. 34-35, AE G)

After immigrating to the United States, Applicant pursued an undergraduate education. She earned her bachelor's degree in 2010. (Tr. 26) She then worked as an insurance agent for about a year, until deciding to pursue graduate school. She is currently pursuing a master's degree, and her transcript reflects that she has earned A's in most of her graduate courses. She expects to finish the program later this year. (Tr. 29-30, AE E)

Applicant has been employed by a federal contractor since October 2011. She has held a position of public trust since 2011, and she currently works in a federal contracting position related to food and drug regulation. (Tr. 27-28, 59-60, 70-71, GE 1; AE K) She submitted a security clearance application in July 2014 (GE 1).

Applicant's father first came to the United States in 2003. (Tr. 32) In 2006, after he was granted permanent United States residency (a "green card"), he sponsored his wife, the Applicant, and two of her sisters into the United States. Applicant's oldest sister was too old to be sponsored as his dependent, so she remained in Pakistan. (Tr. 25, 57)

Applicant's father, 65, became a United States citizen in 2010. He returned to Pakistan shortly thereafter due to his mother's declining health. (Tr. 32, 74, GE 1). Applicant's mother, 58, became a United States citizen in April 2016. (Tr. 32, 74; GE 1, AE H) They remain Pakistani citizens. (SOR ¶¶ 1.a and 1.b) They live in Pakistan so they can care for Applicant's two grandmothers. Her paternal grandmother is in her 90s and suffers from dementia so she requires constant care. Her maternal grandmother is in her 80s. (Tr. 32-34, 65-66, 71-72) Applicant's parents visit the United States once a year. (Tr. 61, 73)

Applicant's father is a doctor. He maintains a practice in Pakistan, though his involvement has lessened due to recent health issues. (Tr. 55, 58-59, 73) Applicant's mother has not worked outside the home. (Tr. 32-33, 59) Applicant testified that she particularly admires and looks up to her father. She testified in detail about his difficult upbringing and the hurdles he had to overcome to achieve a better life for himself and his family. (Tr. 31-32, 49)

Two of Applicant's three sisters were born in Pakistan. (SOR ¶ 1.c) Her eldest sister, 38, is a citizen and resident of Pakistan. Unlike the rest of her immediate family, she has never lived in the United States. She was educated in the United Kingdom and trained as an accountant. She works for a bank. Her husband lives in Australia. At some point, she attempted to relocate to Australia but was unable to find work in her field, so she returned to Pakistan. She lives there now with her children. (Tr. 42-43, 74-82).

Applicant's youngest sister, 23, was also born in Pakistan. She has been living there with her parents while she attends medical school. She is a dual U.S.-Pakistani

citizen. She spent the summer of 2016 in the United States in a medical internship program, and is doing so again in the summer of 2017. Applicant testified that once her sister graduates next year, she expects to move to the United States to pursue her medical career. (Tr. 43, 48-49, 79-81. GE 1)

Applicant's other sister, 34, was born in Saudi Arabia while her father was working there. She has never been a Saudi citizen. She has lived in the United States since coming here with her father in 2003. She has been a naturalized American citizen since 2010. Her husband and two children are U.S. citizens. (Tr. 41, 44; 52, GE 1]

Applicant visited Pakistan several times between 2007 and 2013. She lived in Pakistan with her parents during the summer of 2011, while she was studying for graduate school entrance exams. (Tr. 27, GE 1). Since getting married in 2013, she has visited Pakistan one time. (Tr. 38-39) She and her husband had a marriage ceremony in the United States, and another in Pakistan. (Tr. 89-91) She is close to her sisters and maintains regular contact with her family members in Pakistan, mostly through texting and e-mail every few months. (Tr. 45, 53, 64, 75) She does not intend to return there to live. (Tr. 39)

Applicant's husband testified on his wife's behalf. He is a U.S. citizen by birth. They met at work. He has a teenage son from a prior marriage, and he shares joint custody with the boy's mother. Applicant is actively involved in the boy's life as his stepmother. (Tr. 51, 68, 86-88)

Applicant and her husband have a combined annual income of about \$250,000. They own their home, and they live well within their financial means. Applicant owns no property or other assets in Pakistan, and does not plan to accept any property she might inherit from her parents. (Tr. 37-38, 61, 69-70; AE C, AE F)

Applicant takes pride in the significant volunteer work she had done in her community. She volunteers for the less fortunate and also mentors young students in science, technology, engineering and math. She (Tr. 39-41, 62; AE I, AE J)

Applicant provided work evaluations as well as letters of recommendation from five character references: a supervisor, a personal friend, and three co-workers. All of her references attested to Applicant's honesty, reliability, good judgment, ethics and strong sense of morals. They expressed their belief that were Applicant ever presented with a conflict of interest, she would resolve that conflict in the best interests of the United States, and would alert proper authorities. (AE A, AE B)

## The Islamic Republic of Pakistan (Pakistan)

The United States has had diplomatic relations with Pakistan since Pakistan's creation in 1947. Over the decades, the two countries' relationship has been guided by their common interests in a peaceful, stable and prosperous region.<sup>3</sup>

The United States remains concerned about the continued presence of terrorist and other extremist groups in Pakistan. These groups operate, plan, and conduct domestic, regional, and global attacks from safe havens within Pakistan. The Pakistani military undertook operations to eliminate those safe havens. Although those operations had a significant impact, terrorist organizations continue to operate with Pakistan. Pakistan continues to experience significant terrorist violence. Throughout Pakistan, foreign and indigenous terrorist groups continue to pose a danger to U.S. citizens.<sup>4</sup> A U.S. State Department Travel Warning for Pakistan remains in effect. The State Department warns U.S. citizens against all non-essential travel to Pakistan because of the dangers posed by these groups and other armed elements.<sup>5</sup>

The State Department's human rights reports on Pakistan for 2015 and 2016 reflect the reported commission of human rights violations by elements within Pakistan and the Pakistani government. The reports also note that the most serious human rights problems in Pakistan include extrajudicial and targeted killings, disappearances, torture and lack of rule of law, and sectarian violence. The reports state that corruption within the Pakistani government is a serious problem and the lack of accountability and failure to prosecute these abuses has led to a culture of impunity.<sup>6</sup>

## Policies

It is well established that no one has a right to a security clearance.<sup>7</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."<sup>8</sup>

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<sup>3</sup> HE III

<sup>4</sup> HE II.

<sup>5</sup> See <https://travel.state.gov/content/passports/en/alertswarnings/pakistan-travel-warning.html> (U.S. State Department Travel Warning for Pakistan, issued May 22, 2017).

<sup>6</sup> HE II; <https://www.state.gov/documents/organization/265758.pdf> (U.S. State Department 2016 Human Rights Report for Pakistan). Both the most recent State Department Human Rights Report for Pakistan and the current Travel Warning were published in 2017, before the hearing took place. They postdate the previous versions, cited in HE III. I take administrative notice of certain more recent facts referenced in them consistent with my obligation to make assessments based on timely information in cases involving foreign influence.

<sup>7</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

<sup>8</sup> 484 U.S. at 531.

The adjudicative 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(a), 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 national security eligibility will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

Section 7 of Exec. Or. 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."

## **Analysis**

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

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to

pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

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.”<sup>9</sup>

Applicant’s parents are dual U.S.-Pakistani citizens. They reside in Pakistan in order to care for Applicant’s grandmothers. Applicant’s eldest sister is a citizen and resident of Pakistan. Her youngest sister is a dual U.S.-Pakistani citizen. She is currently in the United States for the summer but will reside in Pakistan with her parents until she earns her medical degree next year. She then expects to begin her medical career in the United States. These family members are all “foreign family members” even though three of them are also U.S. citizens. Applicant’s contact with these family members, coupled with Pakistan’s serious human rights issues, the threat of terrorism, and the government’s inability to stem corruption, creates a “heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

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<sup>9</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following 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 choose between the interests of a foreign individual, group, organization, or government and the interests of the United States; and

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

Applicant parents and oldest sister remain in Pakistan. Her younger sister is currently in the U.S for the summer but will return to Pakistan to finish her medical studies. All but the oldest sister are dual U.S. citizens. This lessens the risk that Applicant might be subject to exploitation, coercion, or duress through her relationship with them because they can return to the United States in the event they are subjected to foreign pressures. However, in light of the matters accepted for administrative notice, AG ¶ 8(a) has limited applicability.

Applicant came to the United States in 2006 at age 19 with several other family members and has largely been here ever since. She has created a life for herself in the United States. She earned a college degree and is pursuing a master's degree. She has married and begun a promising professional career. She formed strong relationships with those she has come in contact with through school, work and her family and community. Most of Applicant's family members have connections with Pakistan, through residence, dual citizenship, or both. Most of them, however, are also U.S. citizens and have been for several years. Applicant has visited Pakistan only once since her marriage in 2013, and has no intention to return there permanently. Applicant can be expected to resolve any conflict of interest in favor of the best interests of the United States. Applicant met her heavy burden of persuasion in establishing that AG ¶ 8(b) applies to her circumstances.

### **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 circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):



(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(a), 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Applicant presented a strong case in mitigation and in support of her request for access to classified information. Her personal character and integrity, which are vital matters to be considered in assessing an individual's suitability for a security clearance, are unassailable. She has been candid about her foreign connections throughout the security clearance process. Furthermore, I had an opportunity to observe her demeanor while she testified. I found to be an impressive and candid witness on her own behalf. I found her forthcoming and resolute in her willingness and ability to resolve any potential conflict of interest in favor of the United States. Accordingly, if any foreign entity were to attempt to influence Applicant through her family in Pakistan, she would report any such attempt to the appropriate authorities and not succumb to the attempt to influence her.

After carefully weighing the evidence, both favorable and unfavorable, and considering the whole-person factors set forth in AG ¶ 2(d), I find that Applicant mitigated the heightened concerns raised by her family connections to Pakistan. The record evidence leaves me without questions or doubts as to her eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B, foreign influence.

### **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
Subparagraphs 1.a-1.c:	For Applicant
Subparagraphs 1.d-1.h:	Withdrawn

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

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Braden M. Murphy  
Administrative Judge