



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05475

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

04/10/2017

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

The Government withdrew the foreign preference security concern and Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On April 13, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C, foreign preference, and Guideline B, foreign influence. The action was taken under 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on April 26, 2016, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 23, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on June 2, 2016. Applicant's response, dated June 4, 2016, is marked as Applicant's Exhibit (AE) 1. The case was assigned to me on March 10, 2017.

## **Procedural and Evidentiary Rulings**

### **Evidence**

The Government exhibits identified as Items 1 through 8 and AE 1 are admitted in evidence without objection.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about Pakistan. The request was included in the record as Item 9. Applicant did not object. The request is not admitted in evidence but I have taken administrative notice of the facts contained in Item 9. The facts administratively noticed are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant is a 44-year-old linguist employed by a defense contractor. He has worked for his current employer overseas in support of the U.S. military, at times in volatile situations, since December 2013. He obtained a high-school diploma in 1990 from a school in Pakistan, and attended community college in the United States in 1997 but did not earn a degree. He served on active duty in the U.S. military from November 1996 to May 1997, and in the Reserve from May 1997 to May 2003. From October 2001 through October 2010, Applicant also worked as a driver to financially support his family. His duties as a driver conflicted with his military duties, resulting in Applicant receiving a discharge under other than honorable conditions. Applicant previously worked for a U.S. defense contractor, also overseas in support of the U.S. military, from November 2010 to July 2013. He has held a DOD security clearance since February 2011. He is married with two adult children and two adult stepchildren.<sup>1</sup>

Applicant was born in Pakistan to Pakistani parents. He immigrated to the United States on a student visa in 1991. He was naturalized as a U.S. citizen and obtained a U.S. passport in October 2010. Applicant's wife and children are U.S. citizens by birth and reside in the United States. Applicant's sister, a dual citizen of Pakistan and the United States, resides in the United States with her family.<sup>2</sup>

Applicant's mother, father, brother, sister-in-law, and nephew are citizens and residents of Pakistan. Applicant has not had any contact with his father since the

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<sup>1</sup> Items 1-8; AE 1. Applicant indicated that he underwent three counterintelligence screenings in 2010, 2014, and 2016, and was not deemed a security risk. AE 1.

<sup>2</sup> Items 1-8; AE 1.

1990's, after his father left his mother. Applicant's mother is elderly. Applicant communicates with her weekly. He provided her \$2,000 between 2001 through 2012 to assist with her living expenses. Applicant communicates quarterly with his brother and sister-in-law, and twice yearly with his nephew. Applicant has not visited his family in Pakistan since September 2013.<sup>3</sup>

Applicant's father retired from the Pakistan military as a lieutenant colonel in 1992. His brother has served in the Pakistan military since 1988 and is currently a colonel, and his nephew since 2012 and is currently a lieutenant. His mother and sister-in-law are homemakers.

Applicant indicated that his allegiance lies with the United States. His wife works in the United States, and his children attend college in the United States. Applicant has owned his home since October 2001. Applicant received two certificates of appreciation from the U.S. military in 2012 and 2015. A 2013 letter of recommendation from an officer in the U.S. military, who was the linguist manager for whom Applicant worked, described Applicant as a linguist of the highest caliber who has built a reputation such that their teams have requested Applicant by name on several occasions. Applicant stated that he would report any incidents involving threats or blackmail to the police and his supervisor.<sup>4</sup>

## **Pakistan**

Pakistan remains a safe haven for terrorist groups seeking to conduct domestic, regional, and global attacks. Several terrorist networks active in Afghanistan operate largely out of Pakistan. The potential for the trafficking and proliferation of weapons of mass destruction are also a concern.

Pakistan continues to experience significant terrorist violence. The Pakistani military undertook operations against some groups that conducted attacks within Pakistan, but failed to do so against other groups that continue to operate, train, rally, propagandize, and fundraise in Pakistan. While Pakistani military operations disrupted the actions of some terrorist groups in Pakistan, it did not directly target them.

In May 2011, U.S. special forces personnel raided a large al-Qaida compound in Pakistan and shot and killed al-Qaida leader Osama bin Laden. In announcing bin Laden's death, senior administration officials characterized him as a "sworn enemy of the United States and a danger to all humanity." That he was found in a residential neighborhood of Pakistan, in a compound that was "roughly eight times larger than other homes in the area with 12-to-18 foot walls topped with barbed wire" and other "extremely elaborate" physical and operational security measures, highlights the U.S. concern that terrorists, militants, and insurgents find safe havens in areas of Pakistan.

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<sup>3</sup> Items 1-8; AE 1.

<sup>4</sup> Items 1-8; AE 1.

Human rights problems include extrajudicial and targeted killings, disappearances, torture, lack of rule of law, and sectarian violence. Corruption within the government and police, as well as rape, domestic violence, sexual harassment, honor crimes, other harmful traditional practices, and discrimination against women and girls remain serious problems. Lack of government accountability remains a problem, and abuses often go unpunished, fostering a culture of impunity. Authorities seldom punish government officials for human rights violations.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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 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 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 Executive Order 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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.

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. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. Applicant’s family members are citizens and residents of Pakistan. His brother and nephew serve in the Pakistani military. Terrorist organizations, the potential for the trafficking and proliferation of weapons of mass destruction, and human rights problems are present in Pakistan. In addition, the Pakistani military has undertaken operations and disrupted the actions of some terrorist groups in Pakistan, but it does not directly target these groups. Applicant’s foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. 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 U.S.; and

(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.

AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b). However, Applicant’s deep and longstanding relationships and loyalties in the United States are sufficient to establish AG ¶ 8(b). He has lived in the United States since 1991. He has been a citizen since 2010. His wife, children, and one sibling are in the United States. He owns his home in the United States. He has worked overseas for two defense contractors in support of the U.S. military, at times in volatile situations, since November 2010. The Appeal Board has held that “an applicant’s proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case.”<sup>5</sup>

### **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

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<sup>5</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have incorporated my comments under Guideline B in my whole-person analysis. Applicant's ties to Pakistan are outweighed by his deep and longstanding relationships and loyalties in the United States. I am confident that he will resolve any conflict of interest in favor of the United States.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his foreign family connections. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline C:	Withdrawn
Subparagraph 1.a:	Withdrawn
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.e:	For Applicant

## **Conclusion**

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

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Candace Le'i Garcia  
Administrative Judge