



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-04034
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 15, 2008

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**Decision**  
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CURRY, Marc E., Administrative Judge:

On August 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. He answered the SOR on September 24, 2007, admitting the allegations. He originally requested a hearing, and later elected to have the case decided on the written record.

Department Counsel mailed the government's file of relevant material (FORM) to Applicant on November 28, 2007. He received it on December 3, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not object to any of the FORM submissions, and filed an undated two-page response. The case was assigned to me on December 14, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Rulings of Evidence**

At department counsel's request, I took administrative notice of the following facts about Pakistan:

1. Pakistan is home to a number of extremist groups, including the Taliban and Al-Qaeda, that target American and other Western interests, high-level Pakistani government officials, and members of indigenous minority and religious groups (Item 8, at 2-5),

2. Because of this continuing danger, the U.S. Department of State, in December 2006, imposed a travel warning for U.S. citizens intending to travel to Pakistan (Item 10),

3. Pakistan has a poor human rights record. Security forces have, at times, tortured people in custody, politically motivated disappearances are common, and the judiciary is not independent (*See Generally*, Item 9), and,

4. Pakistan has supplied nuclear technology to other countries (Item 11 at 2, 7).

## **Findings of Fact**

Applicant admits to the SOR allegations. He is a 51-year-old married man with three children, ages 12, 14, and 16. He is originally from Pakistan, and has been a naturalized U.S. citizen since 1996. He emigrated to the U.S. in approximately 1986 (Response to FORM, undated). He earned an undergraduate degree in mechanical engineering from a Pakistani university in 1984. In 1987, he earned a master's of business administration from an American university. Since then, he has also earned several information technology certifications (Item 5 at 2). Currently, he works as a system administrator for a defense contractor.

Applicant's mother and father-in-law are citizens and residents of Pakistan. His father and his mother-in-law are deceased. His mother is a homemaker. He talks to her by telephone approximately once per week. Applicant's father-in-law is a journalist who lives in the same neighborhood as Applicant's mother (Item 6 at 6). He visits both when he travels to Pakistan. There is no record evidence of any phone contact between Applicant and his father-in-law.

Applicant has five brothers and three sisters. One brother is a naturalized German citizen and resident. The remaining siblings are all Pakistani citizens and residents. Of the four brothers living in Pakistan, one is a retired military official, and the others are a retired police official, a retired city employee, and an electrical engineer, respectively (Item 6 at 6). All of his sisters are homemakers. He talks to his siblings approximately two to three times per year.

Applicant traveled to Pakistan in 1998, 2001, and 2004 to visit family members. In 1998, he traveled alone. He brought his family on the latter two trips. On each trip, he stayed with either his mother or his father-in-law.

When Applicant became a naturalized U.S. citizen in 1996, he initially renounced his Pakistani citizenship. In November 2005, he decided to reinstate his dual citizenship status so that he could travel to Pakistan quickly in case of a family emergency. That month, he applied for, and received a Pakistani passport. It remains valid through 2009 (Item 6 at 5).

Applicant would renounce his dual citizenship, if asked (Item 6 at 5). All of his financial interests are in the U.S. His children were born and raised in the U.S.

### **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, which are useful 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 common sense 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."

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 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 an applicant may deliberately or inadvertently fail to protect or 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 C, Foreign Preference**

Under this guideline, “when 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 ¶ 9). Here, Applicant’s application for a passport issued by the government of Pakistan, nine years after he became a naturalized U.S. citizen, triggers the application of AG ¶ 10(a)(1), “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 [such as] possession of a current foreign passport.”

Applicant’s willingness to renounce his Pakistani citizenship, if asked, triggers the application of AG ¶ 11(b), “the individual has expressed a willingness to renounce dual citizenship.”

Applicant still possesses a passport issued by Pakistan, and has presented no evidence that its possession is approved by the cognizant security authority. Therefore, neither AG ¶ 11(d), “use of a foreign passport is approved by the cognizant security authority,” or AG ¶ 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” apply. Also, none of the other mitigating conditions apply, either.

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

Under this guideline, “foreign contacts and interests may be a security concern if an 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 interests.” Here, Pakistan is a haven for extremist, anti-American groups, and has a history of abusing its citizens’ human rights. The presence of Applicant’s relatives in Pakistan, and his contacts with them generates concerns under 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.”

Although Applicant has visited his siblings on each trip to Pakistan, he only talks to them two or three times per year. Moreover, since emigrating to the United States in 1986, he has only traveled to Pakistan three times. However, neither AG ¶ 8(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.,” nor AG ¶ 8(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,” apply. Regardless of how often he talks to his siblings or other relatives, Applicant is clearly close to them, as demonstrated by his decision to obtain a Pakistani passport to facilitate visits on short notice in the event of a family emergency. Moreover, the government of Pakistan demonstrates little respect for the rights of its citizens, and terrorists are active in several parts of the country. Under these circumstances, the positions or activities of the relatives has little probative value in gauging the likelihood of whether they may be used against Applicant as tools of exploitation.

Applicant has deep and longstanding relationships and loyalties in the U.S. These cannot overcome the potential for coercion generated by his relationship to family members in Pakistan given the depth of their relationship, the nature of the Pakistani government, and the pervasive presence of anti-American extremist groups. Applicant has not mitigated the foreign influence security concern.

### **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(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) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant’s longstanding ties to the U.S. are outweighed by his decision to exercise dual citizenship with Pakistan, a police state that harbors anti-American extremist groups, in order to facilitate visits to his Pakistani relatives. Upon evaluating this case in the context of the whole person concept, I conclude Applicant has not mitigated the security concerns. Clearance is denied.

### **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 C:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.d:	Against Applicant

### **Conclusion**

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

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MARC E. CURRY  
Administrative Judge