



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-03112
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

07/31/2015

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate the security concerns arising from his close family members who are resident-citizens of Pakistan and his substantial financial interest in Pakistan. Clearance is denied.

**Statement of the Case**

On December 4, 2014, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR), alleging that his circumstances raised security concerns under the foreign influence, foreign preference, and financial considerations guidelines.<sup>1</sup> Applicant timely answered the SOR and requested a hearing to establish his eligibility for access to classified information.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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 implemented by DOD on September 1, 2006.

On March 24, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was scheduled, with the agreement of the parties, for April 20, 2015.<sup>2</sup> The hearing was convened as scheduled.

At hearing, Department Counsel offered Applicant's security clearance application, which was marked Government Exhibit (Gx.) 1. Department Counsel also offered Gx. 2, a summary of official, unclassified U.S. Government documents regarding Pakistan for administrative notice.<sup>3</sup> Applicant testified and offered Applicant's Exhibit (Ax.) A. He requested additional time post-hearing to supplement the record. I granted his request and he submitted Ax. B – Ax. D. All exhibits were admitted into evidence or accepted for administrative notice without objection.<sup>4</sup> The hearing transcript (Tr.) was received on April 29, 2015, and the record closed on June 12, 2015.<sup>5</sup>

### **SOR Amendment**

Before the hearing, Department Counsel moved to withdraw allegation 1.d under the foreign influence guideline, allegation 2.b under the foreign preference guideline, and the entirety of Paragraph 3, which alleged security concerns under the financial considerations guideline. Without objection, I granted the first motion to amend and said allegations will not be further discussed. (Hx. I; Tr. at 17-18)

At the conclusion of the hearing, Department Counsel moved to further amend the SOR. Specifically, the Government moved to add two additional allegations under the foreign influence guideline, to wit:

1.j Applicant's sister-in-law and brother-in-law are resident-citizens of Pakistan;  
and

1.k Applicant and his wife stand to inherit a sizeable inheritance from his deceased father-in-law's estate in Pakistan, which is valued at between \$250,000 and \$500,000.

Over Applicant's objection, I granted the second motion to amend because this new, material information only came to light during the hearing. (Tr. at 73-82)

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<sup>2</sup> At Applicant's request, the hearing was scheduled without the usual benefit of 15-days prior written notice. Tr. at 9. See Directive, Enclosure 3, ¶ E3.1.8.

<sup>3</sup> Cf. F.R.E. 201; 1006. See *also* Tr. at 67-70 (Applicant confirms that he read the relevant portions of Gx. 2, agrees the facts regarding Pakistan relayed in the summary are accurate, and has no objection to their consideration for administrative notice).

<sup>4</sup> The Government's position regarding Applicant's post-hearing exhibits was marked Hearing Exhibit (Hx.) IV. The Government's exhibit list, the motion to amend, and discovery letter were marked Hx. I – III.

<sup>5</sup> At hearing, I set a deadline of May 22, 2015, for the submission of post-hearing exhibits. Applicant timely submitted Ax. B and C. After the deadline passed, Applicant submitted Ax. D. As security clearance decisions should be based on the most accurate and up-to-date information, I reopened the record and accepted the late submission.

## Findings of Fact

After a thorough review of the pleadings, exhibits, and transcript I make the following findings of fact:

Applicant was born in Pakistan. He applied and was selected through a highly competitive process to attend a Pakistani military academy. After graduating from the military academy, Applicant became a commissioned officer in the Pakistani military. He had a highly successful 16-year military career, tackling ever challenging assignments and rising quickly through the ranks. While in the Pakistani military, Applicant held the equivalent of a top secret clearance. He was in line for further promotions and prestigious postings when, following his father's death, he decided to retire early from the military. Applicant explained that his decision to retire early from the Pakistani military and immigrate to the United States was to provide for a better life and expanded opportunities for his children. Also, he wanted to be closer to his mother, who at the time was living in the United States with one of his siblings.<sup>6</sup>

Applicant's move to the United States has been beset by numerous personal and financial challenges. For instance, Applicant and his wife attempted to start their own business, but it failed during the recent economic recession. He incurred a substantial amount of business debt and felt a deep personal obligation to pay back his creditors. He resolved all his debts before closing the business. He then started his professional life over again, applying for and accepting an entry-level position with a private company. He took numerous online courses offered by his former employer and, within a short period of time, his hard work paid off in several promotions and better employment opportunities. He has been with his current employer since 2012, when he became a naturalized U.S. citizen. Applicant's program manager writes favorably regarding his work ethic, reliability, and overall character.<sup>7</sup>

Applicant's wife is currently pursuing an advanced academic degree at a U.S. school. She anticipates opening up her own childcare business after she graduates. Applicant's eldest children have been accepted to U.S. colleges. His wife and older children, who were born in Pakistan, are naturalized U.S. citizens. Applicant and his wife recently purchased a home in the United States, and had a child born in the United States. Applicant testified that he knew the challenges he has endured and the sacrifices he has made were worth it when his son, after a visit to Pakistan, thanked him for providing him and his siblings the opportunity for a better life in the United States.<sup>8</sup>

Applicant's military service entitled him to land in Pakistan, free medical care, and a pension. Applicant voluntarily relinquished his entitlement to any land in Pakistan. He and his family have never used the free medical care that he earned through his foreign military service. His Pakistani military ID card expired two years ago, and he has

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<sup>6</sup> Tr. at 24-26, 71-72; Ax. B at 4.

<sup>7</sup> Tr. at 27-31; Gx. 1; Ax. C.

<sup>8</sup> Tr. at 31-33, 46-49; Gx. 1; Ax. D.

not taken action to renew it. Applicant does receive a minor military pension, worth approximately \$1,200 annually. He is willing to renounce all benefits and privileges he earned through his foreign military service, to include the military pension, if such action is deemed a prerequisite for the grant of a security clearance. He used to automatically deposit his military pension in a bank account in Pakistan for his mother's use when she lived in Pakistan. He has retained the bank account in Pakistan.<sup>9</sup>

Applicant's mother and his only remaining sibling living in Pakistan emigrated from Pakistan about five years ago. They live in Country X, and Applicant anticipates his mother's petition to permanently immigrate to the United States will be granted in the very near future. Applicant's mother and his siblings have no connection to the government or military of Pakistan or any other foreign country. Applicant explained that due to the current conditions in Pakistan and changes in the culture, he, his mother, and his siblings no longer see a future for themselves in Pakistan.<sup>10</sup>

Applicant's sister-in-law and her husband are the only remaining close family members who are resident-citizens of Pakistan. Currently, Applicant's sister-in-law lives outside of Pakistan while her husband attends a foreign military academy. He is scheduled to rotate back to Pakistan after his current tour of duty is completed. He is a senior officer in the Pakistani military.<sup>11</sup>

Applicant's father-in-law passed away recently. Applicant anticipates that he and his wife will receive a sizeable inheritance from his deceased father-in-law's estate, worth between approximately \$350,000 and \$500,000. His father-in-law's estate is primarily made up of real property and other assets located in Pakistan. Applicant anticipates liquidating the inheritance and transferring the funds to the United States.<sup>12</sup> He acknowledged, under cross-examination by Department Counsel, that the anticipated inheritance will be a substantial portion of his and his wife's total net worth.<sup>13</sup>

Some of Applicant's former military classmates now serve in high-level posts in the Pakistani government and military. Applicant has had infrequent contact with some of these former classmates. He denied his contact with and connection to these individuals has been anything more than casual. He fully disclosed his contact with and connection to these foreign individuals, as well as all his connections to Pakistan on his security clearance application. He fully discussed throughout the security clearance process his connections to and interest in Pakistan.<sup>14</sup>

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<sup>9</sup> Tr. at 41-45, 63-65; Gx. 1.

<sup>10</sup> Tr. at 32-36; Ax. A.

<sup>11</sup> Tr. at 36-41, 72; Ax. B at 5-6.

<sup>12</sup> Tr. at 36-39.

<sup>13</sup> Tr. at 48.

<sup>14</sup> Tr. at 49-62; Gx. 1; Ax. B.

## Administrative Notice: The Islamic Republic of Pakistan (Pakistan)

Pakistan is a parliamentary federal republic. Pakistan and the United States have been allies in the war against international terrorism since the attacks of September 11, 2001. However, the United States has expressed concern regarding the Pakistani government's commitment and the apparent role of its intelligence agency in supporting the Haqqani Network, a designated foreign terrorist organization.

The United States is also concerned about Pakistan's apparent inability to control its borders. Terrorist and other extremist elements operate from safe havens within Pakistan. The presence of these groups poses a significant threat to U.S. citizens and U.S. interests. These groups have carried out attacks against the United States, the Pakistani government, and both countries citizens. The U.S. State Department warns U.S. citizens to defer all non-essential travel to Pakistan, because of the potential danger posed by the presence of these groups.

The U.S. Government has issued a report regarding the commission of human rights violations by elements within the Pakistani government. The most serious human rights problems include extrajudicial and targeted killings, disappearances, and torture. Corruption within the Government and police is a persistent problem. The lack of accountability and failure to prosecute abuses has led to a culture of impunity.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865, § 2.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that

“security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.<sup>15</sup>

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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.<sup>16</sup>

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

## Analysis

### Guideline B, Foreign Influence

The foreign influence security concern is explained at 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.<sup>17</sup>

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<sup>15</sup> See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

<sup>16</sup> Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). An administrative judge is required to examine an individual’s past history and current circumstances to make a predictive judgment about an individual’s ability and willingness to protect and safeguard classified information. ISCR Case No. 11-12202; ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013).

<sup>17</sup> ISCR Case No. 09-07565 at 3 (App. Bd. July 12, 2012) (“As the Supreme Court stated in *Egan*, a clearance adjudication may be based not only upon conduct but also upon circumstances unrelated to conduct, *such as the foreign residence of an applicant’s close relatives.*”) (emphasis added) (internal citation omitted).

An individual is not automatically disqualified from holding a security clearance because they have connections to and interest in a foreign country. Instead, in assessing an individual's vulnerability to foreign influence, an administrative judge must take into account the foreign government involved; the intelligence gathering history of that government; the country's human rights record; and other pertinent factors.<sup>18</sup>

Applicant's significant connections to and interest in Pakistan, coupled with the current situation in Pakistan, raise the foreign influence concern.<sup>19</sup> The record evidence establishes the following disqualifying conditions:

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 heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(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;

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; and

AG ¶ 7(e): a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

The adjudicative guidelines set forth a number of potential conditions that may mitigate the foreign influence security concern. I have considered all the applicable mitigating conditions, and the following warrant additional discussion:

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.;

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<sup>18</sup> ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

<sup>19</sup> ISCR Case No. 11-06925 at 4-5 (App. Bd. Dec. 13, 2013) (in light of terrorist threat in Pakistan and other country conditions, applicant's close family members and property interest in Pakistan raise a heightened risk of foreign exploitation).

AG ¶ 8(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(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;

AG ¶ 8(e): the individual has promptly complied with existing agency requirements regarding the reporting of contacts . . . from a foreign country; and

AG ¶ 8(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.

Applicant mitigated the foreign influence security concern raised by his close family members who no longer reside in Pakistan or, since the issuance of the SOR, have passed away. Applicant credibly testified that his mother and siblings have decided that their respective futures no longer reside in Pakistan. Applicant's mother and his last sibling who used to reside in Pakistan emigrated from Pakistan several years ago. His mother is in the process of immigrating to the United States. Accordingly, AG ¶ 8(a) applies and mitigates the security concerns arising from Applicant's connections to the foreign family members alleged in SOR ¶¶ 1.a – 1.c.

Applicant also mitigated concerns raised by his connections to and contact with former military classmates who work for the Pakistani government. His contact with these former military classmates is consistent with what one would expect of individuals who went through a significant shared experience in their youth, but whose lives thereafter went in different directions. The limited nature of Applicant's contact with these former classmates, coupled with the significant ties to the United States that he has developed over the past 15 years and voluntary reporting of his foreign connections and interest, mitigate concerns raised by his infrequent contact with and casual connection to these foreign government agents. Therefore, AG ¶¶ 8(b), 8(c), and 8(e) apply and mitigate the security concerns alleged in SOR ¶¶ 1.f and 1.g.

Applicant did not, however, mitigate the security concerns raised by his foreign military service (SOR ¶ 1.e),<sup>20</sup> his remaining close family members in Pakistan (SOR ¶ 1.j), and his significant financial interest in Pakistan (SOR ¶ 1.k).<sup>21</sup> Although Applicant

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<sup>20</sup> Applicant's foreign military service and the pension he earned from that service are alleged at SOR ¶¶ 1.e and 1.h. When two SOR allegations reference the same disqualifying conduct or circumstance, one of the allegations should be resolved in Applicant's favor. Accordingly, SOR ¶ 1.h is decided for Applicant.

<sup>21</sup> Applicant's foreign bank account is not a significant foreign financial interest and would not serve as an effective means through which to influence Applicant. Thus, SOR ¶ 1.i is decided for Applicant

retired early from the Pakistani military, voluntarily relinquished many of the benefits and privileges that he earned through his honorable foreign military service, and established significant ties to the United States, his past possession of a Pakistani security clearance poses a clear conflict of interest with the responsibilities and obligations required of all individuals granted access to this nation's secrets.<sup>22</sup> ISCR Case No. 10-00824 at 4 (App. Bd. Aug. 6, 2012).

Moreover, Applicant's ties and loyalty to the United States are insufficient to mitigate concerns he could be subjected to adverse foreign influence through his wife's sister and her husband. Applicant's sister-in-law and brother-in-law are high-value targets for extremist elements and terrorists operating within Pakistan because of his brother-in-law's position within the Pakistani military.<sup>23</sup> Also, the tenuous relationship of the United States and Pakistan raises the risk that even subtle forms of foreign influence could be exerted on him through his close family members in Pakistan. At the same time, I note that this finding is "not a comment on Applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member."<sup>24</sup>

Additionally, the sizeable financial interest that Applicant and his wife stand to inherit is another avenue through which foreign pressure could be applied. Although Applicant credibly testified that he will liquidate his foreign financial interests once his father-in-law's estate is settled, the estate's property and assets currently reside in Pakistan and are subject to unknown foreign laws and authorities. Again, this finding is not a comment on Applicant's loyalty. Instead, it is a recognition that foreign adversaries operate somewhat freely within Pakistan and their appetite to do harm to the United States is insatiable, and no one should be asked to put themselves in the unenviable position of potentially having to choose between their foreign connections and their security responsibilities.

### **Guideline C, Foreign Preference**

Under AG ¶ 9, the 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." The SOR alleges that Applicant's possession of a Pakistani national identity card and purported statement that he intended to renew the ID card upon its expiration was an indication of foreign preference. Applicant refuted the SOR allegation and mitigated the foreign preference security concern. He left the relative comfort and luxury his military service in Pakistan afforded him to provide a better life for his family in

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<sup>22</sup> Applicant's possession of a Pakistani top secret security clearance was not specifically alleged in the SOR – likely because this adverse information was not known until after the hearing, when he submitted Ax. B. However, Applicant's Pakistani military service was alleged and, thus, he was on notice that any privilege or benefit he received through such military service was a security concern. See ISCR Case No. 14-03200 at 3 (App. Bd. Jul. 16, 2015) (SOR are notice pleadings and disqualifying facts necessarily implicated by an SOR allegation may be relied upon in resolving an individual's security eligibility).

<sup>23</sup> ISCR Case No. 09-06457 (App. Bd. May 16, 2011); ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009).

<sup>24</sup> ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

the United States. He voluntarily relinquished many of the benefits and privileges afforded to him as a retired Pakistani military member. He did not renew his Pakistani military ID card after it expired two years ago – an ID card that would have allowed him unfettered access to many foreign benefits. Notwithstanding the incredible sacrifices Applicant has made and the daunting challenges he has overcome in the past 15 years, he does not regret the decision he made to end his Pakistani military career early and immigrate to the United States. His belief in the correctness of his decision was solidified when his son expressed his gratitude for the sacrifices he made for the family. Applicant demonstrated, both through his words and his actions, his preference for the United States over any foreign country. His receipt of Pakistani benefits and privileges before becoming a U.S. citizen, to include receiving a Pakistani national ID card that has since expired, no longer raise a security concern.<sup>25</sup>

### Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>26</sup> I hereby incorporate my Guideline B and C analysis. Applicant presented a strong case in mitigation and in support of his request for access to classified information, not the least of which was his honesty and full cooperation throughout the security clearance process. However, “[e]ven good people can pose a security risk because of facts and circumstances not under their control.”<sup>27</sup> Despite the favorable record evidence, Applicant’s substantial familial connections to and financial interest in Pakistan leave him susceptible to foreign pressure and influence. Consequently, I must resolve the concerns raised by Applicant’s connections to and interest in Pakistan in favor of national security. AG ¶ 2(b)

### Formal Findings

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f – 1.i:	For Applicant
Subparagraphs 1.j – 1.k:	Against Applicant

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<sup>25</sup> AG ¶ 11(c).

<sup>26</sup> The non-exhaustive list of adjudicative factors are: (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.

<sup>27</sup> ISCR Case No. 01-26893 at 9-10 (App. Bd. Oct. 16, 2002).

Paragraph 2, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Withdrawn
Paragraph 3, Guideline F (Financial Considerations):	WITHDRAWN
Subparagraphs 3.a – 3.i:	Withdrawn

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge