



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 17-03303
)
Applicant for Security Clearance)
)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: Eric A. Eisen, Esq.
01/31/2019

Decision

MASON, Paul J., Administrative Judge:

Applicant's evidence in mitigation is sufficient to dispel the security concerns arising from the guideline for foreign influence. Eligibility for security clearance access is granted.

Statement of the Case

On November 27, 2015, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) application for a security clearance. The Department of Defense (DOD) could not make the preliminary affirmative findings required to grant a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated October 2, 2017, detailing security concerns under the guideline for foreign influence (Guideline B). The 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 *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), June 8, 2017.

Applicant provided his notarized answer on November 13, 2017. The case was assigned to me on June 12, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 25, 2018, for a hearing on July 23, 2018. The hearing was held as scheduled. The Government's one exhibit (GE) 1¹ and Applicant's nine exhibits (AE) A-I were entered into evidence without objection.² One hearing exhibit (HE) 1 (administrative notice) was admitted in evidence. DOHA received the transcript (Tr.), and the record closed on July 31, 2018.

Administrative Notice

I have taken administrative notice of certain relevant facts related to Pakistan. These facts come from source material published by the Department of State and Department of Justice. The facts are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

The SOR alleges that Applicant's mother, his brother, and three sisters are citizens and residents of Pakistan. The last allegation is that he sends approximately \$300 to \$400 a month to his mother in Pakistan. In his answer to the SOR, Applicant admitted the factual allegations.

Applicant, 41 years old, was born in Pakistan in 1977. He has been married since April 2008, and has two children, an eight-year-old daughter and a five-year-old son. He has owned his home since May 2011. He has been working as a cybersecurity specialist since July 10, 2018. He had a similar position in his three previous jobs. In 2013 and 2014, he was a network engineer. Between 2009 and 2012, he was primarily unemployed while attending school. From 2005 to January 2008, he was working remotely as a network administrator and a software engineer in a European country for a software company headquartered in Pakistan. He earned educational credits from January 2004 to May 2006, and June 2006 to February 2008, while working in Europe. From 2013 to the present, he continued earning educational credits, but has not received a degree. He has held a security clearance since May 2013. (GE 1 at 9, 14-20, 50; Tr. 51-57)

Applicant's wife, born in Pakistan, is 40 years old and an internist at a local hospital. She returned to Pakistan for four years of medical school which she completed in 2001. In 2007, she completed her internship and residency in the United States. Her entire family, including five sisters and her parents, also born in Pakistan, immigrated to the United States in 1996. All members of her immediate family are U.S. citizens, except for Applicant's father's three sisters who immigrated to America two years ago and are permanent residents. Her father (Applicant's father-in-law) worked for a fertilizer company in Pakistan; in the United States, he began working as a taxi driver, but is now

¹ The Government's discovery letter dated December 18, 2017, was marked as GE 8.

² Applicant's exhibits, AE A through AE C, were separated into individual exhibits remarked as AE A through AE I.

a real estate broker and owns a driver-license school. Her mother was employed as a teacher in Pakistan, but is a homemaker in the United States. Five of the sisters are married and live in the metropolitan area within a few miles of Applicant's family. His wife's niece (her oldest sister's daughter and a U.S. citizen) and her cousin, a permanent resident who immigrated to the United States in 2017, along with several of the other in-laws, watch Applicant's two children during the day while Applicant and his wife are at work. Applicant is extensively involved in his children's extracurricular activities like swimming and martial arts. (GE 1 at 1-9, 13; Tr. 12-25, 86-87)

Applicant's wife's parents introduced her to Applicant in late 2007, when she was completing her medical residency and about to start practicing medicine. They talked on the phone and realized they were compatible. He immigrated to the United States in February 2008, and they married in April 2008.³ Approximately a year later, they spent three weeks on a return trip to Pakistan to meet Applicant's parents. (GE 1 at 1-9, 13; Tr. 12-22, 86-87)

SOR 1.a – Applicant's mother, 71 years old, is a citizen of Pakistan. In February 2018, she immigrated to the United States to live with Applicant. When she was living in Pakistan, she was a teacher at a community school supported by the Pakistani government, her only affiliation with the Pakistani government. She intends to become a U.S. citizen and live here permanently as traveling back to Pakistan with her illnesses may be unwise and unhealthy. After his father died in 2015, Applicant began sending his mother \$300 to \$400 a month to help pay for treatment of her illnesses. (SOR 1.d) Before she immigrated to the United States in February 2018, Applicant contacted her about once a week. (GE 1 at 26; Tr. 28-31, 60-62)

Applicant's mother lived at his father's Pakistani house before her move to the United States in February 2018. After his father died in 2015, she was the only person in the house. Applicant's brother (SOR 1.d) now owns the house and is responsible for the upkeep. Applicant's parents have no other property in Pakistan, and her tenuous connection to the Pakistani government has terminated with her retirement from the Pakistani school system. (Tr. 63-64)

SOR 1.b – Applicant's brother, 50 years old, is a citizen and resident of Pakistan, and teacher at an elementary school along with his wife. His brother has three children. He speaks to him through the social media on his birthday. Applicant's e-QIP reflects that he contacts his brother weekly by phone. As with Applicant's mother, the brother and his wife have a tenuous affiliation with the Pakistani government based on their teaching positions. They have no connection to the Pakistani military. (GE 1 at 30-31; Tr. 30-31, 65-67)

SOR 1.c – Applicant has three sisters who are citizens and residents of Pakistan. Their ages are 50, 40, and 44. The 50-year-old is a school teacher. Her husband works in the billing department of a community power company. The sister has children, but

³ His wife indicated that he was completing his master's degree, but his e-QIP indicates that he never received a degree in 2006 or 2008, and has no degree in information technology

Applicant does not know the number or their ages. Though he testified he only contacts her about once a year, he hears about all his sisters through his 47-year-old sister who is a U.S. citizen. In his e-QIP, he indicated that he contacted her weekly. As with Applicant's mother, the 50-year-old sister has a vague link to the Pakistani government, but no connection to the military. (GE 1 at 31-36; Tr. 68-69)

Applicant's 50-year-old sister, a resident citizen of Pakistan, was a school teacher and is now a housewife. Her husband operates a hardware business. They have children under 18 years old. According to Applicant's e-QIP, his contact with her was weekly by phone. They have no connection to the Pakistani government or military. (GE 1 at 31-36; Tr. 74-76)

Applicant's 44-year-old sister, a resident citizen of Pakistan, is married to a Pakistani who is a former U.S. military veteran. Her husband became disabled while on duty and returned to Pakistan in 2001. This sister has children over the age of 18. Applicant initially testified that he has no contact with this sister, then he stated that he contacts her through a social media application. (GE 1 at 31-36; Tr. 76-82)

Applicant's 40-year-old sister, a citizen and resident of Pakistan, was a school teacher, but is now a housewife. Her husband operates a hardware business. They have no affiliation with the Pakistani government or military. (GE 1 at 31-36; Tr. 74-76)

Applicant's 47-year-old sister (not alleged in the SOR) was born in Pakistan. She immigrated to the United States in 2012 and was naturalized an American citizen in 2017. She works as a medical assistant in a hospital. She is married to a U.S. citizen who is a taxi driver. They have no children. Applicant testified that he contacts her weekly, but his e-QIP indicates he was contacting her daily. Applicant has not provided any financial support to any of his siblings. (AE C; Tr. 67, 70-75)

Since immigrating to the United States and marrying in 2008, Applicant has taken six trips to Pakistan. The year after he and his wife were married, they traveled to the country. In 2011, Applicant and his wife made the trip so their parents could see their first child who had been born in 2010. In 2013, they went to Pakistan to introduce their second child to his grandparents. In 2014, Applicant's parents came to the United States. Applicant went to Pakistan twice in 2015: once to see his sick father; and then to attend his father's funeral. Applicant returned to the country for his father's death anniversary in 2016, a cultural practice to observe his passing. (GE 1 at 40-50; Tr. 36-38, 83)

Applicant's family members in Pakistan do not know what he does for a living. He has received training on how to safeguard classified information. He has also received training to report any efforts to exert pressure on him through his foreign family members who are citizens and residents in Pakistan.

Applicant and his wife's U.S. assets total approximately \$349,000. The checking and savings accounts are \$54,000. Their home is valued at \$188,000. Their retirement

accounts total \$63,000. Their automobiles are worth \$44,000. Neither Applicant nor his wife have any financial interests in Pakistan. (Tr. 44; AE A)

Character Evidence

Applicant submitted character references from his family members, two neighbors, a former supervisor, and a former coworker. His 47-year-old sister, a U.S citizen, believes Applicant appreciates the freedoms, i.e., the right to vote, afforded him in the United States. He demonstrated good judgment in paying for his mother's health care and efficiently managing her immigration to the United States. Applicant is a good family man. (AE C)

The sister of Applicant's wife met him in 2008 and considers him to be trustworthy and ethical. He has shown that he is a responsible husband and father. (AE D) A neighbor of two years knows that Applicant is thankful for the benefits of being an American citizen. (AE E) Applicant' coworker since September 2016, commended Applicant's customer service qualities, his information technology expertise, and his team player and leadership characteristics. (AE F) A network engineer indicated that he worked with Applicant at a military installation and found him to be dependable and focused on the mission. Applicant expected to be buried in the metropolitan area of his current residence. (AE G) A former supervisor who worked with Applicant for 18 months in 2016 to June 2018, indicated that Applicant exemplified a dependable performance and was always concerned about improving the security of the computer networks. (AE H)

Administrative Notice – Pakistan

Pakistan is a parliamentary Islamic republic with significant internal problems caused by terrorist organizations concentrated in several locations within the country. As of 2014, parts of Pakistan's Federally Administered Tribal Areas, Khyber Pakhtunkhwa province, and Balochistan province were regarded as a safe haven for terrorist groups, including al-Qaeda, the Haqqani Network, Tehrik-e Taliban Pakistan, Lasahkar I Jhangvi, and the Afghan Taliban. These groups create ongoing security problems by targeting western interests, U.S. citizens, senior Pakistani officials, minority political groups, and religious entities. In September 2012, the United States officially declared the Haqqani Network a foreign terrorist organization. Operations in 2014 by the Pakistani military against some of the terror groups had with only marginal success.

The human rights record of Pakistan is not good. Extrajudicial killings, torture, and disappearances have been reported, along with intrusive government surveillance of politicians, political activists, and the media. Government and police corruption, sexual harassment, and gender discrimination are persistent problems.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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."

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 in seeking a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security under Guideline B:

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.

The nature of a country's government, its relationship to the United States, and its human rights record, are relevant in evaluating the chances that an applicant's family members are vulnerable to government pressure or influence. As the guideline indicates, the country in question must be considered. Terrorist organizations, including the Taliban and al-Qaeda, continue to operate against the United States and Pakistani interests within Pakistan. The country has a poor human rights record that is aggravated exacerbated by the country's terrorism and violence.

When evaluating an applicant's ties to foreign family members, the totality of an applicant's foreign family ties as well as each individual family tie must be considered.

Conditions under AG ¶ 7 that could raise a security concern and may be disqualifying include:

(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;

(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; and

(e) shared 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.

Contacts and ties to family members who are citizens of a foreign country do not automatically disqualify an applicant from security clearance access. As set forth under AG ¶ 7(a), the contacts are only disqualifying if they create a heightened risk of foreign exploitation. The presence of terrorist and insurgent organizations, and the unstable security situation within Pakistan intensify the heightened risk of foreign manipulation and exploitation. Applicant's brother and three sisters are citizens and residents of Pakistan. He contacts them at various times during the year even though the contacts are minimal. He has traveled to Pakistan five times between 2009 and 2016. Overall, the level of contacts that Applicant has with his brother and three Pakistani sisters, creates a heightened risk of foreign influence under AG ¶ 7(a). AG ¶ 7(b) is applicable because Applicant's connections to his brother and three sisters create a potential conflict of interest between his obligation to protect classified or sensitive information or technology and his desire to help his sisters by providing that information. AG ¶¶ 7(a) and 7(b) is given much less consideration to Applicant's mother since she is no longer a resident of Pakistan. In February 2018, she became a permanent U.S. resident living with Applicant's family in the United States.

The application of AG ¶ 7(e) is based on Applicant's shared living quarters with his spouse (a naturalized U.S. citizen), potentially creating indirect manipulation of Applicant through his wife's in-laws. AG ¶ 7(e) has little or no relevance to Applicant's spouse because her entire immediate family of five sisters and parents are U.S. citizens and live within a few miles of Applicant's family in the United States. In addition, the record does not address his wife's contact with Applicant's siblings who are citizens and residents of Pakistan.

Conditions under AG ¶ 8 that could mitigate security concerns include:

(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;

(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; 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.

Applicant has ties and regular contacts with his brother and three sisters in Pakistan. In view of these contacts, and the terrorist elements that target Pakistani civilians and U.S. interests in the country, Applicant could be placed in a position of having to choose between the family interests and the interests of the United States. AG ¶ 8(a) does not apply.

AG ¶ 8(b) applies. Applicant has developed longstanding bonds to the United States. He has lived here since February 2008. He married his wife (a naturalized U.S. citizen) in April 2008. Applicant became a U.S. citizen in September 2012. His two children were born in the United States and he is thoroughly involved in their after-school activities as well as their long-term success down life's highway. His closest ties in the United States are his wife, his children, and his wife's entire family, who are all U.S. citizens. In February 2018, his mother became a permanent resident and began living with Applicant. She intends to acquire her U.S. citizenship when eligible and live in this country throughout her senior years. In sum, Applicant can be expected to resolve any conflict in favor of U.S. interests.

AG ¶ 8(c) is inapplicable since Applicant did not rebut the presumption that his relationships with his brother and three sisters are neither casual nor infrequent. Though Applicant's five trips to Pakistan reinforce the notion that his relationships with foreign family members were not casual and infrequent, the trips do not raise security concerns. Two of the trips were to introduce Applicant, his wife, and their children to foreign family members. Three of the trips were related to Applicant's father illness, his death, and a final trip to commemorate the father's death.

Whole-Person Concept

I have examined the evidence under the foreign influence guideline in the context of the nine general factors of the whole-person concept 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(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the specific disqualifying and mitigating conditions in the context of the general factors of the whole person concept. I considered that Applicant moved to the United States in 2008. I considered Applicant's marriage to a naturalized U.S. citizen in April 2008, and that his two children were born in the United States. Applicant became a U.S. citizen in 2012. His mother lives with Applicant's family and has been a permanent resident since February 2018. She intends to become a U.S. citizen when eligible.

I considered the compliments that Applicant received from his former coworkers, his sister and his in-laws. I considered that Applicant appreciates the freedoms he has in the United States, and his respect for the right to vote. All of Applicant's financial interests are located in America. Considering the evidence from an overall commonsense point of view, Applicant has mitigated the security concerns arising from 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.d:	For Applicant

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 eligibility for access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge