



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



In the matter of:)	
)	
)	ISCR Case No. 17-03656
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

03/29/2019

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Applicant has family members who are citizens and residents of Pakistan. Eligibility for access to classified information is granted.

Statement of the Case

On August 10, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on October 12, 2018. He requested a hearing before an administrative judge. The case was originally assigned to another judge and

then was reassigned to me on December 12, 2018. On the same day, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing on January 10, 2019. I convened the hearing as scheduled.

Department Counsel offered two documents into evidence, which were marked as Government Exhibits (GE) 1 and 2. These exhibits were admitted into evidence without objection. She also offered the Government's request for administrative notice regarding the Islamic Republic of Pakistan (Pakistan). Applicant had no objection to Department Counsel's request. Applicant testified and offered ten exhibits, which were marked as Applicant's Exhibits (AE) A through J. Department Counsel had no objection. All exhibits were admitted into the record. DOHA received the transcript of the hearing (Tr.) on January 25, 2019.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Pakistan. (HE 1) The facts administratively noticed are summarized in the Findings of Fact, below.

Findings of Fact¹

Applicant is a 65-year-old software developer. He has worked for his current security clearance sponsor since about April 2018. He worked for a different federal contactor when he submitted his application for a clearance (SCA) on November 25, 2015. He was granted a security clearance in 1984 and again in 2002. He also worked for the Federal Aviation Administration for about 13 years (approximately 1986-1999). (Tr. 15-17.)

Applicant was born in Pakistan and entered the United States in September 1972 at the age of 18. He married a U.S. citizen in 1974 and divorced in 1977. He remarried another American citizen in 1977 and divorced again in 1983. In December 1977, they had one child. He became a naturalized U.S. citizen in 1982. He attended college in the United States, and in 1984, he received his bachelor's degree in computer engineering. In 1989, he married an Indian-born woman in Pakistan. Her father is deceased, but was a Pakistani citizen. Her mother is a citizen and resident of Pakistan. His wife subsequently became a naturalized U.S. citizen. They have three adult children, who were all born in the United States. Applicant has several U.S.-born grandchildren and a U.S.-born great-grandchild. (Tr. 12-14; SCA 7, 10, 16, 31, and 36.)

Applicant's father died in about 1989. He was a Pakistani citizen. He worked as an accountant for a private developer prior to his death. His mother is a dual U.S. and Pakistani citizen. Applicant sponsored her to immigrate to the United States in the late 1980s and to become a U.S. citizen. She has been a housewife her entire life and is now

¹ Applicant's personal information is extracted from his security clearance application, dated June 20, 2017, (GE 1), unless otherwise indicated by a parenthetical citation to the record.

82 years old. She sponsored two of her three sons, Applicant's brothers, to immigrate to the United States. They have become U.S. citizens, as well. Applicant has one other brother and six sisters, who are citizens and residents of Pakistan. Applicant's mother returned to Pakistan due to her health and lives with Applicant's brother and one of his sisters. Applicant's sisters take care of her in her old age. (Tr. 18-19; SCA 19-20, 23-24, 26-27, 32, and 42-43.)

Applicant's mother-in-law has been a housewife her entire life. She is almost 80 years old. He does not speak with her due to a disagreement. He last spoke with her in 2015 or 2016. Since then, Applicant's wife has also not spoken with her mother. Applicant's father-in-law was a civil engineer. Applicant's wife has travelled to Pakistan on two occasions since he married her in 1989 and brought her to the United States. (Tr. 30-32 and 43-4; SCA 31.)

Since arriving in the United States in 1972, Applicant travelled to Pakistan twice, once in 1982, after becoming a U.S. citizen and again in 2015 for less than 10 days to visit with most of his family. He made the trip with one of his American brothers and was unemployed at the time. Applicant's wife did not accompany him. He did not visit with any non-family members during that trip. He did not return to Pakistan for the funeral of his father in 1989. He does not plan to attend the funeral of his mother or any other relative in the future for practical reasons. He has no plans to return to Pakistan for any reason in the future. He speaks or otherwise communicates with his mother every few months. He last saw her in Pakistan during his 2015 trip. His mother does not know that he is seeking a security clearance from the U.S. Government. (Tr. 14-15, 19-20, 31-32, 36, 39, and 45.)

Applicant has even less contact with his Pakistani siblings. All of his sisters are homemakers. None of their husbands work for the Pakistani government or military. His brother in Pakistan works for a private, Pakistani resort company. Applicant communicates with his sisters and his brother in Pakistan very infrequently. He has not talked to any of his siblings since his 2015 visit. Also, Applicant maintains no friendships with anyone in Pakistan. (Tr. 22-27, 28-30, 37-38, and 40.)

Applicant has no assets in Pakistan. All of his assets, including his home, which he has owned since 2002, are in the United States. He does not have a Pakistani passport, and he does not consider himself to be a Pakistani citizen. He also submitted a substantial amount of character evidence attesting to his loyalty and dedication to the interests of the United States. (Tr. 46; SCA 9; AE A, E, H, I, and J.)

Pakistan

The U.S. State Department warns U.S. citizens to reconsider travel to Pakistan due to terrorism. Travel by U.S. Government personnel within Pakistan is restricted. Terrorist groups continue to pose a danger to U.S. citizens throughout Pakistan, and evidence suggests that some victims of terrorist activity were targeted because they are Americans. Although al-Qaida in Pakistan has been degraded, its global leadership continued to operate from remote locations in the region that the group has historically

exploited for safe haven. Pakistan has not taken substantial action against the Afghan Taliban or Haqqani Network, or substantially limit their ability to threaten U.S. interests in Afghanistan. Pakistan has also not taken sufficient action against other externally focused terrorist groups such as Lashkar-e-Tayyiba and Jaish-e-Mohammad, which continued to operate, train, organize, and fundraise in Pakistan.

The U.S. State Department's 2017 Human Rights Report for Pakistan indicates that the most serious human rights problems in Pakistan were the following: (1) extrajudicial and targeted killings; (2) disappearances; (3) torture; (4) lack of rule of law; (5) poor implementation and enforcement of laws; and (6) frequent mob violence and vigilante justice with limited accountability. Other human rights problems included arbitrary detention, lengthy pretrial detention, governmental infringement on citizens' privacy rights, a weak criminal justice system, and a lack of judicial independence in the lower courts, and harassment of journalists. There were government restrictions on freedom of assembly and limits on freedom of movement. Government practices and certain laws limited freedom of religion, particularly for religious minorities. Corruption within the government and police, as well as discrimination against women and girls remained serious problems. The authorities seldom punished government officials for human rights violations.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

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.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The SOR sets forth four allegations under Guideline B regarding Applicant’s mother, brother, six sisters and mother-in-law who are all citizens and residents of Pakistan. The security concern under this guideline is set out in AG ¶ 6, as follows:

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 maybe 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 evidence establishes the following disqualifying conditions:

AG ¶ 7(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;

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 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

AG ¶ 7(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.

The Government's evidence has established that Applicant's foreign contacts, as well as his wife's, create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. These relationships also constitute connections to foreign persons that creates a potential conflict of interest between Applicant's obligation to protect classified or sensitive information or technology and Applicant's desire to help family members and his mother-in-law. AG ¶¶ 7(a), 7(b), and 7(e) apply to Applicant's relationships with the foreign contacts and connections alleged in the SOR.

The following mitigating conditions are potentially applicable:

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 United States;

AG ¶ 8(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

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.

Applicant has established that AG ¶¶ 8(b) and 8(c) fully apply. He has lived in the United States since 1972, basically all of his adult life. Though he eventually married a woman of Pakistani descent in 1989, they have raised their family in the United States as Americans. He is now the proud patriarch of three generations of U.S. descendants. He raised his family in a home in the United States that he has owned at least 2002. All of his assets are in the United States; he has no assets in Pakistan. He has only visited Pakistan twice since immigrating to the United States in 1972. He has no present intention to return to Pakistan. He received his college education in this country, and has made a career based upon that education. He worked for a federal government agency for 13 years and has twice been granted security clearances to work for the government in a classified setting.

The facts of this case do not present a conflict of interest. Applicant's sense of loyalties or obligations to his foreign family member's and his wife's mother is minimal, and he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the U.S. interest. His relationships with his immediate family members in Pakistan, including his mother, can best be described as casual and infrequent. He and his wife have no relationship with his wife's mother due to their estrangement from her.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d).²

I have incorporated my comments under Guideline B in my whole-person analysis. After weighing the disqualifying and mitigating conditions under these guidelines and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his foreign contacts and connections.

² The 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.

Formal Findings

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

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs 1.a-1.d: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

John Bayard Glendon
Administrative Judge