



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-01624
)
Applicant for Security Clearance)
)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: Leon J. Schachter, Esq.
07/05/2019

Decision

MASON, Paul J., Administrative Judge:

Applicant’s strong ties to the United States overcome the fading ties that she has with her second cousin and friend in a foreign country. The foreign influence guideline is resolved in Applicant’s favor. Eligibility for security clearance access is granted.

Statement of the Case

On December 28, 2017, 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 July 3, 2018, 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 her notarized answer on July 27, 2018. The case was assigned to me on November 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 21, 2019, for a hearing on March 14, 2019. The hearing was held as scheduled. The Government's three exhibits and Applicant's 22 exhibits (AE) A-M were entered into evidence without objection. The Government's administrative notice memorandum and source documents, and Applicant's administrative notice memorandum and source documents were marked as hearing exhibits (HE) 1 and HE 2, respectively. DOHA received the transcript (Tr.), and the record closed on March 26, 2019.

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 source material includes joint statements, fact sheets, and remarks published by the White House, the Secretary of State (through the Department of State), and the prime minister of Pakistan, in 2010, 2013, 2014, and 2015. The facts are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

The SOR alleges that Applicant's uncle (SOR 1.a) and her friend (SOR 1.b) are citizens and residents of Pakistan. Applicant admitted both allegations with explanations. She requested a hearing.

Applicant is 36 years old. She married a naturalized U.S. citizen in December 2016. He has worked for a U.S. federal agency since 2011 and has a security clearance. She received her bachelor's degree in April 2005 (psychology) and two master's degrees in May 2007 (psychology) and May 2011 (mass communications). She has been working for a defense contractor as a research analyst since September 2013. She received a promotion to a principal analyst in 2016, and is being considered for a position as task leader. She held a security clearance from 2012 to August 2014, when the clearance was "disapproved." (GE 1 at 9-45, 60-61; Answer to SOR; AE A; Tr. 22-26, 31-32, 37)

SOR 1.a – Applicant's uncle is a citizen and resident of Pakistan. He is a doctor (pulmonologist) in the Pakistan Military Medical Corps. This individual is actually Applicant's mother's cousin, not her uncle. Applicant explained that growing up in the Pakistani culture one refers to older relatives as an aunt or uncle. When Applicant started filling out security applications, she continued to refer to her mother's cousin as uncle. He served as a doctor for the Pakistan Military Medical Corps from the 1990s to about 2012, then he moved to another country for additional training for about a year. In 2013, he returned to the Pakistan Military Medical Corps because Applicant testified that he has been in the Corps for about 20 years. Her contact with him is four times a year through social media and phone. Her last face-to-face contact with him was in April 2017, when she lodged at his home for a couple of days. Applicant sent an email to him

in November 2018. He has never asked Applicant about her job or information relating to her job. (GE 1 at 42-43; GE 2 at 28, 37; GE 3 at 1; answer to SOR; Tr. 44, 46-47, 54-56)

SOR 1.b – Applicant’s friend is a citizen and resident of Pakistan. She is one of Applicant’s closest friends since high school (circa 1996). She is employed as a teacher. As of May 2016, Applicant was contacting her friend about four to five times a year. The friend came to the United States in 2012 for medical treatment. During her stay, the friend resided with her sister in another state. Applicant last spoke to her friend about six months before the hearing. (GE 1 at 43-44; GE 3 at 2; answer to SOR; Tr. 56-59)

Applicant’s mother is 58 years old. She is a naturalized U.S. citizen, and lives in another state. She is employed as a mental health clinician. (GE 1 at 35-36; GE 3 at 1; Tr. 33)

Applicant’s father is 69 years old and is a Pakistani citizen, who resides in the United States. In a May 2016 signed affidavit, Applicant indicated to an investigator from the Office of Personnel Management (OPM) that she was unaware of her father’s location due to her parents’ divorce in approximately 2001. Her last social media contact with him was in 2009, when they discussed her brother’s personal problems. While in Pakistan, her father was employed by a pharmaceutical company. In the United States, he was driving a taxi. (GE 1 at 36-37; GE 3 at 1)

Applicant’s 30-year-old brother, a lawyer, is a citizen of Pakistan living in the United States in another state. In December 2017, she did not know his citizenship status and was estranged from him for about seven years. Applicant did not believe that her brother was affiliated with any foreign government. (GE 1 at 38-39)

Applicant’s father-in-law and mother-in-law are naturalized U.S. citizens living in another state. (GE 2 at 4) Applicant’s husband has several relatives (not listed in the SOR) who are citizens and residents of Bangladesh. These persons are identified in the relatives’ matrix in her January 2018 answers to interrogatories (GE 2 at 9-18). Neither Applicant nor her husband have had any contact with the first nine relatives since 1992. (GE 2 at 9-12) Applicant or her husband expect to contact the tenth relative every two or three years by email and phone, with their last contact occurring in 2017. (GE 2 at 12) The last contact with the relative listed at number 11 was in 1985. There has been no contact with the 12th relative. (GE 2 at 12) The last contact with the next eight relatives was in 1992. (GE 2 at 13-15) The last contact with her husband’s 21st and 22nd listed relative was in 2016, with future contact expected to occur once every ten years. (GE 2 at 16) The last contact with the 23rd relative was in 2016, with no expected future contact. They have had no contact with the 24rd relative. Applicant or her husband’s last contact with his 25th relative was in 2016, with no contact since. (GE 2 at 17) Their last contact with the 26th relative was in 2017, with future contacts expected to occur once every 10 years. Neither Applicant nor her husband have had any contact with the last four relatives listed. (GE 2 at 17-18) From the 30 relatives listed on the matrix,

Applicant's only recent contact was with the 10th and 26th relative. Applicant or her husband's last contact with the tenth relative was in 2017, with the frequency of future contact occurring once every two to three years. The last contact with the 26th relative was also in 2017, with the frequency of expected future contact expected to occur once every 10 years. None of Applicant or her husband's relatives are in a position to be exploited by a foreign power that could force Applicant or her husband to choose between loyalty to the person(s) involved and the United States. (GE 2 at 9-18, 31)

Neither Applicant nor her husband have any financial interests in a foreign country. They do not receive any income from a foreign government or entity. Conversely, they do not owe money or have a legal obligation to any foreign government or entity. If Applicant suspects someone is trying to exploit her or influence her through her family member, or in any other fashion, she will resist and refuse the efforts to influence her and report the attempt to her facility security officer (FSO) or the Federal Bureau of Investigation (FBI), should the situation require that action. (GE 2 at 22-26, 30; Tr. 51-52)

Applicant's financial interests in the United States include a home she and her husband purchased in November 2018 for approximately \$572,000. According to their personal financial statement (PFS), dated February 11, 2019, their combined monthly income was \$10,600. Their assets totaled \$1,092,000. Their combined monthly expenses were \$7,000, with a monthly remainder of \$3,600. Applicant is a registered U.S. voter. (AE J; AE K1-K4; AE L)

Character Evidence

A vice president, three coworkers, one former coworker, and a manager provided character references for Applicant. The vice president of her company believes that she qualifies for access to classified information because of her conscientiousness. (AE E1) Her coworker since 2013, who became her supervisor in 2016, has worked on 20 national security projects with her. She is devoted to following the rules and complying with protocol. She receives regular security briefings and has demonstrated she would report attempts to exploit her. (AE E2) A coworker of five years finds Applicant honest and reliable, and a person who will not succumb to pressure. (AE E3) A coworker who has known Applicant for four years knows that she follows the rules and would report attempts to manipulate her. (AE E4) Applicant's friend of eight years, who worked with her on a job in 2010, and has continued a friendship with her, considers her to be honest and reliable. (AE E5) Applicant's colleague, who served as her manager on several projects, considers her to be a valuable employee with integrity and job performance as her strong points. (AE E6) Applicant's job performance for evaluation periods of 2015, 2016, and 2017 have been good to excellent. (AE B1, B2, B3) Applicant received a letter of commendation for her work on two projects in 2014. (AE C)

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 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. Pakistani government 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. 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 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; 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 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.

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 second cousin and friend are citizens and residents of Pakistan. She contacts them through social media or by phone about four times a year. She traveled to Pakistan once in 2012. On her visit to the country in April 2017, she stayed with her second cousin for two days. Overall, the level of contacts that Applicant has with her second cousin and her friend create a heightened risk of foreign influence under AG ¶ 7(a). AG ¶ 7(b) is applicable because Applicant's connections to her second cousin brother and female friend create a potential conflict of interest between her obligation to protect classified or sensitive information or technology and her desire to help her second cousin and her friend by providing that information.

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 her second cousin and friend 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. These bonds began when Applicant migrated to the United States in June 1996. She became a U.S. citizen in October 2004. In April 2005, she earned her bachelor's degree in psychology at an American university. In May 2007 and May 2011, she graduated from U.S. institutions with a master's degree in psychology, followed by a master's degree in mass communications. She has worked professionally for her U.S. employer as a research analyst since September 2013, then received a promotion to a principal analyst in 2016, and currently anticipates a promotion to task leader. She married her husband (a naturalized U.S. citizen) in December 2016. Her husband has been working for a U.S. federal agency since 2011. She and her husband purchased their home in December 2018. Her closest ties in the United States are to her husband, her mother, and her husband's parents, all U.S. citizens. 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 her relationships with her second cousin and friend are neither casual nor infrequent.

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 1996. She became a U.S. citizen in 2004. By 2011, Applicant had attained a bachelor's degrees and two master's degrees from American universities. I considered Applicant's marriage to a naturalized U.S. citizen in December 2016, and their U.S. net worth over \$1,000,000.

I considered the exemplary compliments that Applicant received from her coworkers and managers regarding her job performance, her competence in safeguarding classified information, and their complete confidence in her to report any attempt to pressure or manipulate her. I considered Applicant's understanding of the additional opportunities she has in America for growth educationally, professionally, and socially as a woman. All of Applicant's financial interests are located in America. I considered the unlisted foreign family members of Applicant's husband that are identified in GE at 9-18. Applicant or her husband have had no recent contact with most of them and their contact with the other relatives has been sporadic at best. Given Applicant's strong bonds that she has developed to the United States over the past 22 years, I conclude that her problematic relationships with her brother and her father will not disturb her determination to resolve all conflicts in favor of the U.S interest. 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.b:

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