



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



In the matter of: )  
)  
) ISCR Case No. 18-01655  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

April 10, 2019

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On October 15, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and J. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on November 21, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 8, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 14, 2019, scheduling the hearing for February 11, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 4, which were admitted without objection. The record was left open until March 11, 2019, for receipt of additional documentation. On February 21, 2019, Applicant offered one

document, which I marked Applicant's Exhibit (AppX) A and admitted without objection. DOHA received the transcript of the hearing (TR) on February 26, 2019.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to Pakistan. Department Counsel provided a six-page summary of the facts, supported by four Government documents pertaining to Pakistan, identified as GX 4. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted to all the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 34-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since August of 2014. (GX 1 at page 13.) He is married to a U.S. citizen. (GX 1 at pages 26~27.) Applicant was born in Dubai, lived in Pakistan when he "was 11 or 10" years old," and has not visited Pakistan since then, and moved to the United States in 2003 as a twenty-year-old. (TR at page 17 lines 4~14, and GX 1 at page 6.) He is well respected in the workplace, as attested to by his "Site . . . Manager." (AppX A at page 2.)

### **Guideline B - Foreign Influence**

1.a. Applicant's 66-year-old mother is a citizen of Pakistan, but has lived in the United States since 2016. (TR at page 15 lines 13~14, at page 16 lines 1~21, at page 30 lines 9~24, and at page 31 lines 17~20.) She works for a U.S. corporation, and is unaware that Applicant is applying for a security clearance. (*Id.*)

1.b. Applicant's 40-year-old sister is a dual-citizen of Pakistan and Canada, and has lived in Canada since 2012. (TR at page 15 lines 19~21, at page 16 line 22 to page 17 line 3, at page 18 lines 1~4, and at page 31 lines 17~20.) Like her mother, she is unaware that Applicant is applying for a security clearance. (*Id.*)

### **Guideline J: Criminal Conduct**

2.a. and 2.b. In July of 2006, and again in September of 2006, more than twelve years ago, Applicant was involved domestic disputes with his newly-married wife. (TR at page 21 line 6 to page 27 line 16, and at page 28 line 22 to page 30 line 4.) As a result of both incidents he was charged, but the charges were subsequently dismissed. (*Id.*) He has attended anger management classes, and they both have attended "marriage conferences." (TR at page 21 line 6 to page 27 line 16, at page 28 line 22 to page 30 line 4, and AppX A at page 1.) They have been happily married "for over 12 years," as

attested to by Applicant's wife. (AppX A at page 1.) She avers that they "are devoted to one another and . . . are committed to make this marriage last." (*Id.*)

### **Notice**

I take administrative notice of the following facts regarding the Islamic Republic of Pakistan. Pakistan is a federal republic, but the U.S. Department of State warns U.S. citizens not to travel to Pakistan due to terrorism. Pakistan has suffered numerous terrorist attacks. Pakistan has recently also had significant human rights issues.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B - Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (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

Applicant's mother and sister are citizens of Pakistan. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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; and

(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

Applicant's mother lives in the United States and his sister in Canada. They have little knowledge of Applicant's need for a security clearance. Their situs and lack of knowledge vis-à-vis Applicant do not raise a national security concern. Foreign Influence is found for Applicant.

#### **Guideline J: Criminal Conduct**

AG ¶ 30 sets forth the security concerns pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant had two incidents involving domestic disputes in 2006. The evidence establishes the above two disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Sufficient time has passed since Applicant's 2006 transgressions. He and his spouse have sought out and benefitted from marriage counseling. The evidence does establish mitigation under both of these conditions. Criminal Conduct is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors 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, 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. Applicant is respected by his Site Manager as an "outstanding employee."

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence and Criminal Conduct security concerns.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.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 interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge