



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-02152
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

06/06/2019

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence) by Applicant’s family connections to Pakistan. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on October 13, 2016. On November 28, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted under Executive Order (Exec. Or.) 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 (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on January 2, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 6,

2019, and the case was assigned to me on April 4, 2019. On April 24, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 9, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. At Department Counsel's request, supplemented by my own motion, I took judicial notice of relevant facts about Pakistan. (Hearing Exhibit (HX) I; HX II; Tr. 8-9.) The facts noticed are set out below in my findings of fact. Applicant testified and submitted Applicant's Exhibit (AX A), which was admitted without objection. DOHA received the transcript (Tr.) on June 3, 2019.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c, and he admitted SOR ¶ 1.d in part. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 43-year-old program manager employed by defense contractors since February 2009. He manages programs for two U.S. Government agencies. (Tr. 23-24.) He worked for private-sector employers in the United States from August 2000 to February 2009. He has never held a security clearance.

Applicant was born in Pakistan. He came to the United States in August 1995 on a student visa and obtained a bachelor's degree in business administration in August 2000. He later learned a master's degree in project management in May 2012. (AX A, Exhibit 6 at 3-9.)

Applicant married in February 2003 and has two children, ages 14 and 9. His wife was born in Pakistan, came to the United States in 1998 or 1999, became a U.S. citizen, and sponsored Applicant for U.S. citizenship. (Tr. 21.) He became a U.S. citizen in October 2008. Their children are U.S. citizens. He renounced his Pakistani citizenship in April 2017. (AX A, Exhibit 1.) Applicant's father-in-law is a citizen and resident of the United States, and his mother-in-law is a citizen and resident of Canada.

Applicant and his wife purchased a home in the United States in May 2003 and still live there. They do not own any property or have any financial assets in Pakistan. Applicant testified that if he and his two siblings inherit their parents' home and investment properties in Pakistan, he would sell his share and bring the proceeds of the sale to the United States. (Tr. 29.) The record does not reflect the value of his parents' home and investment properties.

Applicant's parents are citizens and residents of Pakistan. His mother is not employed outside the home. His father is employed by a company that was formerly Saudi-owned but has been privatized for the past four or five years. His father's employer is an electrical power and construction company. (Tr. 27.) Both of his parents

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

have green cards issued in April 2015, allowing them to have extended visits in the United States and to eventually retire in the United States if they choose to. (AX A, Exhibit 5; Tr. 24-25.) Applicant testified that he previously visited his family members in Pakistan every two or three years, but he has not traveled to Pakistan for about five years. (Tr. 43.) Applicant's mother has vision problems and has received treatment in the United States. If she requires additional treatment, Applicant anticipates that she and Applicant's father will retire in the United States as permanent residents, and his mother will be able to obtain the treatment she needs. (Tr. 50.)

Applicant has two brothers, ages 46 and 44. Applicant's younger brother is a citizen and resident of Canada. His older brother came to the United States in 1991, attended U.S. universities, and was then employed in the United States until 2002, when he returned to Pakistan. He runs a small weaving and printing business in Pakistan. He married in Pakistan and has two children, who are U.S. citizens by virtue of having been born in the United States. (Tr. 32.) Applicant talks to his older brother about once a week.

Applicant has two paternal uncles who retired from the Pakistani Army as brigadiers. One is 90 years old and retired about 35 years ago; the other is 80 years old and retired about 25 years ago. Their children reside in the United States and Canada. Applicant's contact with his uncles is by telephone and infrequent. He last visited them in Pakistan in 2015.

Applicant has occasional contact with middle-school classmates from Pakistan. He regards one of them as a "good friend," and they exchange text messages on social topics once or twice a month. (Tr. 39-40.)

Pakistan is a federal republic. It experienced election irregularities in May 2013, but elections have otherwise been free and fair. Transitions in the military and judiciary have been orderly. Although terrorist groups in Pakistan have been seriously degraded, they continue to operate from remote locations that historically have been exploited as safe havens. Pakistan suffered numerous terrorist attacks during 2016 and 2017. The United States suspended security assistance to Pakistan in August 2017, to encourage Pakistan to prevent militant and terrorist groups from using its territory. The Department of State discourages travel to Pakistan due to threats of terrorism. Pakistan's most significant human-rights issues include extrajudicial and targeted killings, disappearances; torture, lack of rule of law, poor implementation and enforcement of laws, frequent mob violence, and vigilante justice with limited accountability.

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 alleges that Applicant's mother and father are citizens and residents of Pakistan (SOR ¶¶ 1.a and 1.b), one of his brothers is a citizen and resident of Pakistan (SOR ¶ 1.c), and his two paternal uncles are citizens and residents of Pakistan and are both retired generals in the Pakistan military (SOR ¶ 1.d). The security concern under this guideline 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 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.

Although the United States and Pakistan have had disagreements regarding the safe havens for terrorism, Pakistan is generally regarded in the United States as a friendly country. However, Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

The following disqualifying conditions are relevant:

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(f): substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶¶ 7(a) and 7(f) require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The Applicant's immediate family members in Pakistan and the risk of terrorism are sufficient to establish the "heightened risk" in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b).

AG ¶ 7(f) is not established. Although Applicant's mother has vision problems, both of his parents are otherwise in good health. Applicant's potential inheritance of property in Pakistan is speculative and uncertain, both as to the likelihood of it occurring and its value. His potential property interests in Pakistan were not alleged in the SOR.

The following mitigating conditions are potentially applicable:

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.

AG ¶ 8(b) is established. Applicant, his wife, and his children are citizens and residents of the United States. He has lived in the United States since 1995, worked in the United States since August 2000, completed his education in the United States,

owned his residence in the United States since May 2003, and has been a U.S citizen since October 2008. Based on his deep and longstanding relationships and loyalties in the United States, I am confident that Applicant would resolve any conflict of interest in favor of the United States.

AG ¶ 8(c) is established for Applicant's contacts with his paternal uncles. However, he has not overcome the rebuttable presumption that his contacts with immediate family members in Pakistan are not casual. See ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

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 and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid, sincere, and credible at the hearing. After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his foreign family members in Pakistan.

Formal Findings

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

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a-1.d:

For Applicant

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.

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.

LeRoy F. Foreman
Administrative Judge