



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



In the matter of:)
)
) ISCR Case No. 18-02246
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: Matthew D. Estes, Esq.

06/28/2019

Decision

Curry, Marc, Administrative Judge:

Applicant mitigated the foreign influence security concerns generated by his parents, who are citizens of Pakistan, living in the United Arab Emirates (UAE), and by his brother, who is a citizen of Pakistan, living in the United States. Clearance is granted.

Statement of the Case

On October 9, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (AG), which became effective on June 8, 2017.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the interests of national security to grant or continue Applicant's security clearance. It recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On October 30, 2018, Applicant responded to the SOR, admitting all of the allegations, and requested a hearing. On March 7, 2019, the case was assigned to me. On March 22, 2019, the hearing was scheduled for April 10, 2019.

At the hearing, Department Counsel submitted two documents for admission that I incorporated into the record as Government Exhibits (GEs) 1 and 2. Applicant's counsel submitted three exhibits that I marked and admitted as Applicant's Exhibits (AE) A through C. Department Counsel requested that I take administrative notice of the facts set forth in Hearing Exhibits (HE) I through XIII. Because Applicant's counsel did not receive copies of HE VI through HE XIII before the hearing, I deferred judgment on these documents, and I left the record open through April 26, 2019, to provide Applicant's counsel an opportunity to review the documents and submit any additional administrative notice documents. The day after the hearing, Applicant's counsel filed a memo, stating that, upon review, he had no objection of HE VI through XIII. The memo also contained an attached statement from Applicant. Department Counsel had no objection to the post-hearing statement. I am going to take administrative notice of the facts set forth in all of the documents that Department Counsel submitted for administrative notice, and incorporate Applicant's counsel's letter with Applicant's post-hearing statement as AE D. The transcript was received on April 30, 2019.

Findings of Fact

Applicant is a 41-year-old married man with two children, ages 15 and 8. He was born in Pakistan and moved with his family to the UAE when he was one month old. After spending his childhood in the UAE, Applicant immigrated to the United States in 1995 at age 18 to attend college. He graduated in 1999, double-majoring in systems engineering and computer science. (Tr. 15) He later earned a master's degree from another U.S. university in 2008. (GE 1 at 12) He has been a naturalized U.S. citizen since 2006. (Tr. 16) He is the treasurer of his homeowner's association, and is active in other community groups. (Tr. 17)

Applicant has been working for his current employer, a federal government contractor, since May 2017. According to his supervisor, he is a "trustworthy, reliable, and loyal employee." (Answer, Enclosure (Enc.) 7) According to another current supervisor, Applicant has a unique blend of financial knowledge and experience with technology, and has a strong work ethic. (Answer, Enc. 9)

Applicant's parents are citizens of Pakistan. They have been living in the UAE for more than 40 years. Applicant's father is a civil engineer. He is semi-retired. (Answer, Enc. 4) His mother is a homemaker. In 2010, they obtained permanent U.S. resident status and began spending six to eight months per year living in the United States. (Answer, Enc. 4) Their intention was to relocate permanently. Accordingly, they began transferring assets to the United States and home-shopping. (Tr. 23) In 2011, their plans were interrupted when Applicant's father was diagnosed with two life-threatening

diseases, prompting three years of intensive treatment, including the amputation of some of his toes. Applicant's father ultimately recovered. (Tr. 18)

Shortly after Applicant's father recovered, Applicant's mother began experiencing health problems, prompting a knee replacement surgery in September 2018. She was scheduled to have her opposite knee replaced the week after the hearing. (Tr. 18)

Applicant's parents received medical treatment in the UAE from an affiliate of a U.S. hospital. They have resumed their plans to relocate to the United States. Applicant has talked to his parents more frequently over the past three years since their health problems. He last traveled to the UAE in April 2018 to help them handle logistics related to his father's various medical procedures. (Tr. 22; GE 2 at 4) Applicant owns no assets in the UAE.

Applicant has two brothers (B1 and B2) and a sister. All of his siblings live in the United States. B1 and his sister are naturalized U.S. citizens. B2 is a citizen of Pakistan by virtue of his parents' Pakistani citizenship, and has never lived there. He was born in the UAE in 1982, then moved to the United States in 2001, as a teenager, to attend college. (Tr. 27) He has lived in the United States since then. (Answer (Enc. 5) He completed his undergraduate degree and an executive MBA program in the United States. He is married and has one child. Both his wife and his child are U.S. citizens. (Tr. 29) He is a management consultant, and he has been a permanent legal U.S. resident since 2012. He talks to Applicant approximately twice per month. (Answer, Enc. 5 at 2) Applicant's brother has no assets in Pakistan.

Applicant has not visited Pakistan in more than 20 years. He has no assets there. (Tr. 17)

Administrative Notice

Pakistan is a federal republic. It is an important counterterrorism partner, and has been working to foster political reconciliation between the Afghan government and the Taliban. (HE III at 2) However, some terrorist groups operate in remote areas of Pakistan with impunity. (HE III at 3) Moreover, human rights abuses continue to persist, as laws are enforced arbitrarily, criminal suspects are subject to vigilante justice, and privacy rights are routinely violated. (HE V at 1)

The UAE is a federation of monarchies consisting of seven emirates. (HE VII at 1) The UAE is active partner in countering terrorism and religious extremism. It works closely with several non-governmental organizations in fostering the development of online, anti-terrorist media. (HE VII at 2) The UAE mandates compulsory moral education classes for public and private school students in all grades to promote religious tolerance. (HE VII at 2) Nevertheless, the UAE's participation in anti-terrorism coalitions generates a moderate risk of terrorism in Abu Dhabi, its capital. (HE XI)

As a regional financial hub with a free trade zone, the UAE is challenged with the threat of terrorist organizations laundering money through its financial institutions. (HE VII at 2) Also, businesses seeking to evade trade restrictions on commerce with countries such as Iran and Syria have attempted to funnel restricted goods through the UAE. (HE X at 4) The UAE has a robust regulatory scheme in place to address these issues.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

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. “[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

Under this guideline, “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.” (AG ¶ 6) Applicant’s relationship with his parents and one of his brothers, all of whom are citizens of Pakistan, raises the issue of whether the following disqualifying condition is potentially applicable under 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.

Applicant's parents have not lived in Pakistan in more than 40 years. His brother has never lived in Pakistan, has no ties there, and is a citizen simply by virtue of his parents' Pakistani citizenship. He has been living in the United States for nearly 20 years. Applicant has no ties to Pakistan, having relocated from there with his parents when he was an infant. I conclude that AG ¶ 7(a) does not apply, and that there are no foreign influence security concerns stemming from the Pakistani citizenship of Applicant's parents and brother.

Applicant's parents' residence in the UAE raises the issue of whether AG ¶ 7(a) applies to their relationship with him. The UAE is unequivocally committed to fighting terrorism and promoting religious tolerance. Conversely, the UAE's support for U.S. regional objectives has generated a moderate risk of terrorism in its capital. Moreover, terrorist organizations and unscrupulous businesses have attempted to exploit the UAE's free trade zone to either launder money or move goods through the UAE to countries that are subject to international import restrictions.

On balance, the risk of exploitation, inducement, or coercion through Applicant's parents is moderated by the UAE's support for U.S. regional objectives, and its robust initiatives to combat not only terrorism, but religious extremism, as well. Under these circumstances, I conclude that AG ¶ 7(a) does not apply, and Applicant's parents living in the UAE do not pose a foreign influence security concern.

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 their conduct and all the 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.

In addition to the reasons discussed in the analysis, I considered the length of time Applicant has been living in the United States, and his thorough integration into U.S. society, in reaching my decision.

Formal Finding

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 security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc Curry
Administrative Judge