



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-02239
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2020

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has mitigated foreign influence security concerns in this case. However, he did not mitigate personal conduct security concerns due to falsifications on security clearance applications. Eligibility for access to classified information is denied.

Statement of the Case

On July 17, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline E (personal conduct). The action was taken under Executive Order (EO) 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's) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR, and requested a hearing. I was assigned the case on January 6, 2020. A notice of hearing dated January 29, 2020, scheduled the hearing for February 13, 2020. The hearing was conducted as scheduled. The Government introduced seven documents, which were admitted into evidence as Exhibits

(GX) 1-7 without objection. Applicant testified and offered eight documents, accepted without objection as Applicant's Exhibits (AX) A-H. The transcript was received on February 24, 2020. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about the Islamic Republic of Pakistan. The request and the attached source documents were admitted into evidence as GX 7. All of the documents referenced in the Request for Administrative Notice and the facts asserted therein are from open sources and are dated. Pakistan has been plagued by corruption and human rights problems. The country has experienced numerous recent terrorist attacks. Terrorists have targeted U.S. diplomats and diplomatic facilities in the past. The U.S. Government has limited ability to provide emergency services to U.S. citizens in Pakistan due to the security environment. The Department of State warns U.S. citizens to reconsider or avoid travel to Pakistan in certain areas due to terrorism and outbreaks of violence.

Applicant posed no objection to the request. I have taken administrative notice of the facts contained in the source documents in GX 7 and incorporated them by reference. The facts are summarized in the written request and will not be repeated here.

Findings of Fact

Applicant is a 35-year-old senior software engineer who was born and educated in Pakistan. He received his undergraduate degree in Pakistan. He came to the United States in June 2002 and became a naturalized U.S. citizen in 2008. (GX 4) His Pakistani citizenship was revoked. He has four children who are U.S. citizens. His wife is a naturalized U.S. citizen. (Tr. 15) He has held a security clearance since 2012. He has worked on various Government projects and he has worked in support of the U.S. military in the United States and abroad. (Tr. 20) Applicant submitted his most recent security clearance application on June 5, 2017. (GX 1) He also submitted SCAs in 2013, 2014, and 2015. (GX 2, 3, and 4)

The sole Guideline B allegation (SOR ¶ 1.a) concerns Applicant's mother-in-law and father-in law, who are citizens and residents of Pakistan. Under Guideline E, the SOR alleged that Applicant falsified material facts on his security clearances in 2015, 2014, 2013, and in background interviews in 2016 and 2011, by failing to disclose his brother as a relative. (SOR ¶¶ 2.a-2.e). Applicant's brother has been in a U.S. prison since 2005. The SOR alleged in SOR ¶ 2.f that Applicant resigned from his employment after being told that he would be fired in 2013. Applicant denied all allegations of falsification under Guideline E. (Answer)

Applicant admitted SOR ¶ 1.a., concerning his in-laws in Pakistan. He stated that he has minimal telephone contact with them, about two or three times a year. Applicant's

wife talks to her parents by phone about every few months. Her mother is a housewife and her father is retired. (Tr. 29) Applicant stated that he does not know much about them. He met his wife's parents in Pakistan in 2010 when he married his wife. Their marriage was pre-arranged. His in-laws have never been to the United States. They do not know the nature of Applicant's work. He considers them "old and aged" and simple people who have no connection with the government. (Tr. 31; GX 5) Applicant does not give them financial support.

Applicant has five siblings: four brothers and one sister. They reside in the United States and are naturalized U.S. citizens. (Tr. 27) One of his brothers has been in a U.S. prison since 2005. (GX 6) In Section 18 of the SCAs that he prepared in 2013, 2014, and 2015. Applicant listed his siblings, but he did not list the brother in prison.

Applicant stated that he was advised by his first employer that he did not have to list the brother in prison because Applicant had minimal contact with him and Applicant does not like to speak about his past. (Tr. 33-34) Applicant stated that he relied on that advice and when he completed subsequent security clearance questionnaires, he did not change any answers to disclose his brother in prison. (Tr. 34)

During a 2016 subject interview when asked if he had any other family members to list, Applicant said "No." When asked directly by the interviewer if he had a brother in prison, Applicant responded in the negative again. (GX 5) In his 2011 subject interview, he confirmed that no other relatives needed to be listed. (GX 5)

At the hearing, Applicant testified that he takes his mother to visit his brother in prison about twice a year. (Tr. 57) He acknowledged that he sees his brother on these visits. Applicant's mother lives with Applicant and his family. Applicant's brother calls from prison to speak to her mother, and sometimes Applicant will answer the phone and speak to him. (Tr. 58)

However, when Applicant answered the SOR, he stated that his estranged relationship with his brother is unspoken because it would be unfair if it were to negatively impact Applicant's life. (Answer) He added that he "falsely" believed that this disclosure of his brother in prison would negatively impact his ability to obtain a clearance. Applicant stated that his intent was not to defraud the U.S. Government.

Applicant disclosed his brother in prison on his 2017 SCA. Applicant acknowledged that the omission of his brother's details looks like a deliberate failure to disclose material facts. Applicant testified that he has received counseling and stressed that since 2017, he has disclosed his brother in prison during the clearance application process. He said one of his other brothers advised him to disclose that he had a brother in prison. (Tr. 62)

The final SOR allegation, ¶ 2.f, concerns Applicant's resignation in 2013 from a job before being fired for issuing an unauthorized badge to someone at work. Applicant explained at his hearing that the issue resulted from a personality conflict. (Tr. 67-69)

Applicant submitted five letters of recommendation from various personal friends and professional colleagues. Each letter attests to Applicant's integrity, positivity, responsibility, and reliability. He is described as a valuable asset to any team. Military officers for whom Applicant worked stated that he was a dedicated and respectful employee. (AX A – E) Applicant also submitted an entry on duty (EOD), dated January 2020 for approval for work with another government agency. (AX F, H)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 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 that is 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, such considerations as whether the foreign country is known to target United States 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. The following 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 in-laws are citizens and residents of Pakistan. Applicant's foreign contacts may create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could potentially mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (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 U.S., 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.

I considered the totality of Applicant's foreign contacts and interests. Guideline B is not limited to countries hostile to the United States. As the DOHA Appeal Board held in ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004):

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.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant came to the United States in 2002. He became a U.S. citizen in 2008. Applicant's in-laws in Pakistan are retired. They have never visited the United States. Applicant has little contact with them. His wife only occasionally communicates with her parents by telephone. Applicant's wife and children are U.S. citizens. Applicant's siblings reside in the United States. His mother also lives with him.

Applicant's immediate family members are U.S. citizens. He has longstanding relationships and loyalties here. He worked for various contractors and for the military abroad for many years. He has been described as a solid citizen. His in-laws are citizens and residents of Pakistan, but the contact is minimal. There is no indication that they are affiliated with the Pakistani government or intelligence services. His family does not know the particulars of his work. AG ¶¶ 8(a), 8(b), and 8(c) apply to mitigate the Guideline B security concern regarding Applicant's in-laws in Pakistan.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual

may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (2) any disruptive, violent, or other inappropriate behavior.

Applicant prepared SCAs in 2013, 2014, and 2015. In disclosing his family members in response to Section 18 on those SCAs, he repeatedly omitted one of his brothers, who has been in prison since 2005. He did not list this brother on an SCA until his most recent application, in 2017.

In answering the SOR allegations, Applicant stated that he “falsely” believed that talking about his imprisoned brother could have a negative impact on his ability to have a security clearance. He also testified that he did not answer the various security clearance questions with a deliberate intention to deceive the Government. Earlier, he stated that he received advice from a prior employer, who stated that Applicant did not have to list the brother in prison because Applicant did not have contact with him. However, Applicant testified that he has had contact with this brother by phone when the brother calls his mother from prison. He also has visited the brother in prison, with his mother. The question on the SCA was straight-forward and clear as to listing siblings. Applicant actively chose not to list the brother in prison on multiple SCAs. His various explanations for his repeated omissions are not credible. AG ¶ 16(a) applies.

During a 2016 subject interview when asked if he had any other family members to disclose, Applicant said “No.” When asked directly by the interviewer if he had a brother in prison, Applicant responded in the negative again. This was a lie. AG ¶ 16(b) applies to Applicant’s falsifications during his background interviews.

SOR ¶ 2.f concerns Applicant’s resignation in 2013 from a job before being fired for issuing an unauthorized badge to someone at work. Applicant explained during his hearing testimony that the issue resulted from a personality conflict. I found Applicant’s explanation of the circumstances credible. AG ¶ 16(d) does not apply. I find for Applicant on this allegation.

Conditions that could potentially mitigate personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

After considering the mitigating conditions outlined above, I find the following. Applicant did not list his brother in prison on an SCA until 2017. This was after submitting multiple previous SCAs without disclosing this brother, and after a 2016 background interview in which Applicant deliberately lied about his brother in prison, including once he was confronted by the interviewing agent. AG ¶ 17(a) does not apply.

Applicant explained that he initially failed to disclose his brother in prison because his employer told him he did not have to disclose the brother if Applicant had no contact with him. Applicant did, in fact, have contact with his brother in prison, and he repeatedly failed to disclose that brother on later SCAs, until 2017. AG ¶ 17(b) does not apply.

The repeated nature of Applicant's falsifications about his brother in prison preclude application of AG ¶ 17(c). The fact that Applicant referenced counseling in his hearing testimony and listed his brother in prison on his most recent SCA, in 2017, is not sufficient evidence to establish that his behavior is unlikely to recur. AG ¶ 17(d) does not apply. Applicant has not mitigated the personal conduct security concerns.

Whole-Person Analysis

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(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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence, but he has not mitigated personal conduct security concerns.

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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-e:	Against Applicant
Subparagraph 2.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge