



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



In the matter of: )  
)  
) ISCR Case No. 19-02085  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Mark A. Myers, Esq., Applicant's Counsel

May 21, 2020

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On July 19, 2019, 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 Guideline B. 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 September 12, 2019, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on December 16, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 16, 2019, scheduling the hearing for January 6, 2020. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 and 2, which were admitted without objection, and Hearing Exhibit (HX) I for Administrative Notice. Applicant testified on his own behalf, and offered 12 documents, which I marked

Applicant's Exhibits (AppXs) A through P, and admitted into evidence. DOHA received the transcript of the hearing (TR) on January 14, 2020.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to The Islamic Republic of Pakistan. Department Counsel provided a six-page summary of the facts, supported by seven Government documents pertaining to The Islamic Republic of Pakistan, identified as HE I. 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 the allegations in SOR ¶¶ 1.e., 1.f., and 1.h~1.k. He denied SOR allegations ¶¶ 1.a~1.d, and 1.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 46-year-old employee of a defense contractor. (GX 1 at pages 5 and 13.) He has a Bachelor's Degree, and two Master's Degrees from American universities. (TR at page 15 lines 6~19.) Applicant has been employed with the defense contractor since April of 2017. (GX 1 at page 13, and TR at page 59 line 20 to page 61 line 18.) He is married to a U.S. citizen. (GX 1 at pages 21~22.)

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

1.a~1.d. Applicant categorically denies these allegations regarding a former business interest in Pakistan. His American company dealt with solar panels. (TR at page 18 line 3 to page 24 line 12, and AppX F.) It was deregistered in the United States and Pakistan in 2019, as evidenced by formal documentation submitted by Applicant on behalf of his former business. (TR at page 18 line 3 to page 24 line 12, and AppXs A and E.)

Applicant's enrolment with the solar panel company was never "hidden," as alleged. This is clear from the registration and deregistration documentation, noted above. He did draft email correspondence to Pakistan's Minister of Finance (AppX B), but it was for his American nephew, who was the company's Chief Operating Officer. (TR at page 27 line 5 to page 30 line 1, at page 46 line 22 to page 48 line 10, and AppX C.)

While the former company did employ six Pakistani relatives, its foreign bank accounts have been closed, as evidenced by banking documentation. (TR at page 30 line 2 to page 32 line 7, and AppXs G and H.)

1.e. Applicant's 70 year-old mother and 74 year-old father are dual nationals with Pakistan. (TR at page 32 line 8 to page 34 line 10, and GX 1 at pages 24~28.) His

mother is not employed and his father is retired from a U.S. state “transit authority.” (*Id.*) Apart from their primary residence in the United States, “they own a house in . . . [their] village,” which they visit “once every two years . . . [for] about three months” at a time. (TR at page 32 line 8 to page 33 line 17.)

1.f. and 1.g. Applicant’s brother-in-law is a citizen and resident of Pakistan. (TR at page 34 lines 11~14.) Between 2013~2016, Applicant lent his mother-in-law about \$35,723 to fund the brother-in-law’s “startup home building business,” and to “help build a family home” for his mother-in-law in Pakistan. (TR at page 34 line 11 to page 37 line 15.) These monies have been repaid, and Applicant’s mother-in-law now lives in the United States. (TR at page 62 line 7 to page 64 line 2, and AppXs M and N.)

1.h. Applicant’s father-in-law is a citizen and resident of Pakistan. (TR at page 37 line 16 to page 38 line 23.) “He works . . . on a dairy farm.” As they speak different dialects, Applicant has spoken to his father-in-law in person “probably [only] five times” during the 12 years that he has been married. (*Id.*)

1.i. Applicant’s male cousin is a citizen and resident of Pakistan. (TR at page 38 line 24 to page 40 line 15.) He is “a barber.” (TR at page 64 line 16 to page 65 line 4.) Applicant has spoken to his cousin “five to 10 times over the last 40 years. (TR at page 38 line 24 to page 40 line 15.)

1.j. Applicant’s uncle is a citizen and resident of Pakistan. (TR at page 40 line 11 to page 41 line 4.) He is also “a barber.” (TR at page 65 lines 5~8.) Applicant has met with or spoken to his uncle perhaps only three times. (TR at page 40 line 11 to page 41 line 5.)

1.k. Over the last 13 years, since 2007, Applicant has provided his Pakistani family about \$4,000, normally in increments of \$300~\$500 pursuant, to the Muslim tradition “called Zakth.” (TR at page 41 line 5 to page 42 line 16.)

### **Notice**

I take administrative notice of the following facts regarding The Islamic Republic of Pakistan: Pakistan is a federal parliamentary republic. The U.S. State Department has issued a Level 3; Reconsider travel advisory to Pakistan due to terrorism. The Pakistani military and intelligence services nominally reported to civilian authorities but essentially operate without effective civilian oversight. (HE 1 at pages 1~5.)

### **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 the 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. Three 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;

(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

(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

Applicant owned a solar panel business that was run by his American nephew in Pakistan. He also has Pakistani relatives to whom he lent and gave monies. 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;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has discontinued his business in Pakistan. Those monies loaned to his mother-in-law, who is a U.S. citizen, living in the United States, have been paid back. Those monies given to his Pakistani relatives, about \$4,000 over a period of 13 years, is de minimus at best. Two are barbers, and the other works on a dairy farm. Foreign Influence 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(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected in the workplace and in his community. (AppX D.) His Pakistani contacts are infrequent, at best. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

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 security concern.

### **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.~1.k:	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