



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 19-02375

Appearances

For Government: Mary Margaret Foreman, Esq.
Department Counsel

For Applicant: *Pro se*

August 6, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

On February 13, 2020, 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 (Foreign Influence). 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 April 6, 2020, and requested that his case be decided by an administrative judge without a hearing. (Item 2.) On May 22, 2020, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 5, was provided to Applicant, who received the file on June 15, 2020.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted additional material, which is identified as Applicant Exhibit A and admitted without objection. The case was assigned to me on July 28, 2020. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is granted.

Procedural Rulings

In the FORM, the Government requested I take administrative notice of certain facts relating to the Islamic Republic of Pakistan (Pakistan). Department Counsel provided a seven-page summary of the facts, supported by 14 Government documents pertaining to Pakistan, collectively identified as Item 6. 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

Guideline B, Foreign Influence

Applicant admitted SOR allegations ¶¶ 1.a, 1.c, 1.d, and 1.f. He denied allegations ¶¶ 1.b and 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 71-year-old employee of a defense contractor. He is married and has two adult children. Applicant was born in Pakistan in 1949, entered the United States in 1973, and became a naturalized American citizen in 1982. He has a master's degree. Applicant has been employed by a defense contractor since June 2018. He does not currently hold a security clearance, but has held one in the past. (Item 3 at Sections 1-4, 9, and 13B; Applicant Exhibit A.)

Applicant worked as a Federal civilian employee from 1982 to 1990, and again from 2005 to 2012. Applicant worked overseas in the Persian Gulf area from 2005 to August 2014, and again from September 2015 to January 2018. Applicant returned to the United States full-time in January 2018. (Item 3 at Sections 11 and 13B; Applicant Exhibit A.)

1.a. Applicant has two brothers and four sisters. Except for one brother, all of his remaining family now lives in the United States. His brother retired from the Pakistani Army as an officer in 2017. Applicant has not seen this brother since he returned to the United States in January 2018. His only contact with this brother since then is through social media. (Item 2; Item 4; Applicant Exhibit A.)

1.b. The SOR alleged that Applicant's son resided in Saudi Arabia. Applicant stated that his son returned to the United States in 2017. The Government conceded

that this allegation has been mitigated. Accordingly, it is found for Applicant. (Item 2; FORM at footnote 1.)

1.c. The Government alleged that Applicant maintained close and continuing contact with various friends and family members in Pakistan. In this regard Applicant stated, "Since 2018, there is ONLY minimal/infrequent contacts with friends and relatives in Pakistan using social media (WhatsApp) for personal greetings." (Applicant Exhibit A at 1-2.)

The following three allegations, 1.d, 1.e, and 1.f, concern Applicant's financial connections in Pakistan. For ease of discussion they will be addressed together. At the time the SOR was issued in February 2020, Applicant had cash and property assets in Pakistan worth between \$140,000 and \$160,000. This included \$22,000 in several bank accounts; an apartment owned by Applicant's wife worth approximately \$70,000; and property that was alleged to be worth \$111,000, but due to currency deflation in Pakistan had been reduced to approximately \$70,000. (Item 5.)

Applicant submitted documentation from his bank in the United States showing that approximately \$100,000 had been remitted from his Pakistani bank. Applicant stated that only approximately \$20,000 remained in Pakistan as of June 29, 2020, and that amount was in the process of being transferred. (Applicant Exhibit A.) Item 5 indicated that Applicant had approximately \$601,000 worth of assets in the United States, before transfer of the funds from Pakistan.

Pakistan

I take administrative notice of the facts set forth in Item 6. Pakistan is a parliamentary federal republic, created in 1947 after British India was partitioned when the British government granted India its independence. Pakistan was created for the Moslem population of the Indian sub-continent. Its population is about 170 million. After September 11, 2001, Pakistan reassessed its relations with the Taliban and supported the U.S. and international coalition in its efforts to remove the Taliban from power. Many Islamic extremists and terrorists are known to inhabit parts of Pakistan, leading to a growth of their insurgency. Although Pakistan has intensified its efforts to deal with the violence and terrorists, the country continues to experience serious problems. The U.S. Department of State confirms that many border cities are known as safe havens for terrorists. Numerous suicide bombings and kidnappings have taken place over the past years. Human rights violations continue to be a significant problem, as killings, torture, and disappearances remain prevalent. The Pakistani government maintains domestic intelligence surveillance activities. The U.S. government warns Americans against travel to Pakistan.

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, "Any 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.

Directive ¶ E3.1.14 requires that the Government must present sufficient 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 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 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 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 is originally from Pakistan and has one family member there. He also has social contact with friends in Pakistan. Applicant had substantial financial assets in 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;

(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; 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's evidence supports the fact that he is a conscientious and patriotic American citizen and member of the defense industry. He has demonstrated that, while he is in minimal contact with his single brother in Pakistan, there is no conflict of interest, because his sense of loyalty or obligation to Pakistan is minimal. Further, he has deep and longstanding loyalties to the United States. Applicant moved to the United States in 1973. He was employed by the United States government for many years in important jobs, many overseas. His wife is an American citizen, and his two children are native-born American citizens. In addition, his other brother and four sisters all live in the United States. Applicant has liquidated almost all of his financial interests in Pakistan, and submitted evidence that the assets have been moved to the United States. Applicant presented evidence of substantial ties to the United States. Applicant has successfully maintained a security clearance in the past. He can be expected to resolve any conflict of interest in favor of the United States interest. Guideline B 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 national security 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 that guideline, but may warrant additional comment.

Applicant was born in Pakistan, he is an American by choice and worked with the United States military for many years. His financial assets are in the United States. His closest familial ties are with his wife and children, all of whom are American citizens. His remaining contacts in Pakistan are infrequent. 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 national security eligibility and a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.f: 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. Eligibility for access to classified information is granted.

Wilford H. Ross
Administrative Judge