



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



In the matter of:)
)
) ADP Case No. 19-03212
)
Applicant for Public Trust Position)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

06/02/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On December 27, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline B (foreign influence). Applicant responded to the SOR on February 19, 2020, and requested a hearing before an administrative judge.

The case was assigned to me on April 28, 2021. The hearing was convened as scheduled on May 20, 2021. Government Exhibit (GE) 1 was admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified, but he did not submit any documentary evidence.

Department Counsel requested that I take administrative notice of certain facts about Pakistan. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not

be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in Pakistan.

Findings of Fact

Applicant is a 63-year-old employee of a defense contractor. He has worked for his current employer since 2017. He is applying for eligibility for a public trust position for the first time. He has an associate's degree that he earned in 1983 and a bachelor's degree, which he earned in 1986. He is twice divorced with three adult children. A fourth child died in an accident. (Transcript (Tr.) at 18, 28-29, 44; GE 1)

Applicant was born in Pakistan to Pakistani parents. He came to the United States in 1980 on a student visa, remained, obtained permanent residency, and became a U.S. citizen in 1994. His ex-wives are both originally from Pakistan. His children were all born in the United States. He also has grandchildren. (Tr. at 17-19, 28-29; Applicant's response to SOR; GE 1)

Applicant father is deceased. His mother, brother, one of his sisters, and other extended family members are citizens and residents of Pakistan. His mother is elderly, mentally incapacitated, and unable to care for herself. His sister in Pakistan is a widow. She lives with their mother and cares for her. His brother owns a company that manufactures parts for farm equipment and vehicles. His other sister is a citizen and resident of Canada. (Tr. at 19-20, 24, 39-42; Applicant's response to SOR; GE 1)

Applicant owns a house in Pakistan with an estimated value in U.S. dollars of \$225,000. He has been attempting to sell it for a number of years. His sister manages the house as a rental property. The tenant paid the rent a year in advance. Applicant has a bank account in Pakistan with about \$8,000 to \$9,000 in it, which came from the rental of his property. He estimated his net worth in the United States to be about \$600,000. (Tr. at 20-21, 38, 41-44; Applicant's response to SOR; GE 1)

Applicant has worked overseas for periods, including in Pakistan, but he considers the United States his home. His children and grandchildren are all living in the United States or Canada. This is where he plans to remain. He expressed his undivided loyalty to the United States. He credibly testified that his family and assets in Pakistan could not be used to coerce or intimidate him into revealing sensitive information, and that he would report any attempt to do so. (Tr. at 25-27, 29-31, 34-35, 45-46, 51; Applicant's response to SOR; GE 1)

Policies

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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(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.

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 applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline B, Foreign Influence

The trustworthiness 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 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 trustworthiness 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;

(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 mother, brother, and one of his sisters are citizens and residents of Pakistan. He owns a house in Pakistan with an estimated value in U.S. dollars of \$225,000, and he has a bank account in Pakistan with about \$8,000 to \$9,000. The potential for terrorist and other violence against U.S. interests and citizens remains high in Pakistan, and it continues to have human rights problems. Applicant's foreign contacts and assets create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence trustworthiness 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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; 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.

I considered the totality of Applicant's ties to Pakistan. Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding sensitive 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 is a loyal U.S. citizen. He came to the United States in 1980 and became a U.S. citizen in 1994. His children and grandchildren are all in the United States or Canada. He expressed his undivided allegiance to the United States, which he considers his home. He credibly testified that his family and financial interests in Pakistan could not be used to coerce or intimidate him into revealing sensitive information.

I find that Applicant's ties to Pakistan are outweighed by his deep and long-standing relationships and loyalties in the United States. It is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of Pakistan. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a), 8(b), and 8(f) are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 public trust position 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 in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant mitigated the foreign influence trustworthiness 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
Subparagraphs 1.a-1.g:	For Applicant

Conclusion

It is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Edward W. Loughran
Administrative Judge