



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



In the matter of:)	
)	
)	ISCR Case No. 20-00316 ¹
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 13, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). Applicant responded to the SOR on April 30, 2020, and requested a hearing before an administrative judge.

The case was assigned to me on July 6, 2021. The hearing was convened as scheduled on August 2, 2021. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, called five witnesses, and submitted Applicant's Exhibits (AE) A and A1 through A11, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Pakistan. Without objection, I have taken administrative notice of the facts

¹ The SOR incorrectly identified this case as a public trust position (ADP) case. The SOR was amended at the hearing to reflect that this is a security clearance (ISCR) case.

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 39-year-old prospective employee of a defense contractor. He will be hired if he receives a security clearance. He has bachelor's and master's degrees. He and his wife had two children. One child tragically passed away about two weeks after she was born. (Transcript (Tr.) at 23, 34; GE 1; AE A, A5)

Applicant and his wife were born in Pakistan to Pakistani parents. He met his wife through their families while he was attending post-graduate school in Europe. They decided that the United States provided the best opportunities for them and their children. They immigrated to the United States in 2015, and they both became U.S. citizens in 2019. His wife is a professional in a technological field and a part-time teacher at a community college. Their children were born in the United States. Their deceased daughter is buried in the United States. (Tr. at 33-34, 38-41; GE 1, 2; AE A, A5)

Applicant's parents and brother are citizens and residents of Pakistan. His brother lives with his parents on a farm in a rural part of Pakistan. Applicant applied to sponsor his parents and brother to immigrate to the United States. He hopes they will arrive this year, but the COVID-19 pandemic has slowed the process. He sends his parents about \$400 per month to help support them. (Tr. at 39-41, 45-48, 50; Applicant's response to SOR; GE 1, 2; AE A, A7, A8)

Applicant's wife's parents have been divorced since his wife was a young child. They both emigrated from Pakistan. Applicant's mother-in-law is a U.S. citizen and resident. Applicant's wife has had no contact with her father since her parents' divorce. Her father lives in Australia. (Tr. at 34-35; GE 1)

Applicant and his wife bought adjacent investment properties in Pakistan in 2016 for the equivalent of about \$25,000 each property. They planned to sell the properties after the properties increased in value. COVID-19 has delayed their ability to travel to Pakistan to sell the properties. Applicant and his wife are in the process of buying a home in the United States, and plan to use the proceeds from the sale of the properties in Pakistan as a down payment. Applicant and his wife have about \$100,000 in assets in the United States. (Tr. at 41-44, 48-50; Applicant's response to SOR; GE 1, 2; AE A, A6, A7)

Applicant considers the United States his home. The opportunities for him and his family are here; his closest family lives here or are in the process of immigrating to the United States; and his daughter is buried here. He has applied to renounce his Pakistani citizenship. 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 classified information, and that he would report any attempt to do so. (Tr. at 35, 40, 50-51; GE 1, 2; AE A10)

Applicant called witnesses, and he submitted letters attesting to his excellent job performance and strong moral character. He is praised for his professionalism, work ethic, reliability, honesty, dependability, and integrity. (Tr. at 22-31; AE A1-A4)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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. 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 parents and brother are citizens and residents of Pakistan. Applicant and his wife own adjacent properties in Pakistan with an estimated value in U.S. dollars

of about \$25,000 each. 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 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 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 and his wife came to the United States in 2015 and became U.S. citizens in 2019. His children were born in the United States, and his daughter is buried here. His mother-in-law is a U.S. citizen and resident, and he petitioned for his parents and brother to immigrate to the United States. 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 classified 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) and 8(b) are applicable, and AG ¶ 8(f) is partially applicable.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: For Applicant

Subparagraphs 1.a-1.f: For Applicant

Conclusion

It is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge